

# HINDU CODE BILL

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### SECTION III

#### DISCUSSION ON THE HINDU CODE AFTER RETURN OF THE BILL FROM THE SELECT COMMITTEE (11TH FEBRUARY 1949 TO 14TH DECEMBER 1950)

\* HINDU MARRIAGES VALIDITY BILL

**Pandit Thakur Das Bhargava** (East Punjab : General) : I move :

*" That the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be referred to a Select Committee consisting of Giani Gurmukh Singh Musafir, Sardar Hukum Singh, Shri M. Ananthasayanam Ayyangar, Shri Deshbandhu Gupta, Shrimati G. Durgabai, Shrimati Renuka Ray, Shri Ramnath Goenka, Dr. Bakshi Tek Chand, Lala Achint Ram, Ch. Ranbir Singh, Shri Mahabir Tyagi, and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five. "*

Sir, in making this motion, with your permission, I will just state what the present condition of the law is. At present in all matters, Hindus, Sikhs and Jains are bound by the Hindu Law. In regard to marriage today according to the terms of the Hindu Law, a marriage between a man and a woman belonging to different castes is not valid except in Bombay where *anuloma* marriages are allowed but the *pratiloma* marriages are not allowed. In Allahabad, Madras and Calcutta, the High Courts have been pleased to hold that even the *anuloma* marriages are not valid.

As regards persons belonging to different religions, I should say here also the position is very indefinite. According to custom any marriage is allowed which may not be allowed according to the strict principles of the Hindu Law. For instance, in the Punjab even *karvari* and *chandradari* marriages are allowed, and though according to strict Hindu Law marriages between members of different Hindu communities are not allowed, by custom in many places such marriages are allowed. For instance, in Nepal such marriages are held to be valid. In the Punjab, which is not a caste-ridden Province, marriages between the Sikhs and Hindus have been held to be valid not by the courts but by the society in general. Their children have been allowed to inherit and they have been treated just as though the marriages have taken place according to law. As between Jains and Hindus previously no marriages used to take place, but at present the pendulum has swung the

other way and marriages take place between Jains and Hindus, especially Jain Aggarwals and Hindu Aggarwals, but it is very doubtful if a Jain Aggarwal could marry validly a Shudra or a Brahman. As regards sub-divisions and sub-castes also, before the Act of 1946 was passed marriages between sub-divisions of the Hindu community were declared legal in some places and in others illegal.

But that is beside the point here. If sub-division and sub-caste is the same, then I am sorry to have used the word " sub-caste "here. The marriage between the members of the sub-divisions of the principal caste have already been legalised. In regard to the rest, for instance, if persons belonging to different religions and different castes want to marry, my humble submission is that according to the present law such marriages are not legal. At present, public opinion clearly demands that this must go and the marriage between persons of different faiths as well as of different castes should be made legal. At present there are many young men and women who want to marry beyond their castes. So far as public opinion goes, I am on sure ground that we are a solid rock of foundation for this measure.

Taking it from a national standpoint, may I humbly submit to the House that to resolve the present friction between Hindus and Sikhs in the Punjab and to make them one solidified people if hundred girls of Sikhs and Hindus were married to hundred boys of Hindus and Sikhs, the whole trouble would have gone. In fact, I believe that if the Hindus and Muslims had married with each other, this Pakistan would not have been brought about. If we adopt this inter-marriage as a system among ourselves, I am perfectly sure that all the bitterness between the castes and the bitterness between persons of different faiths would go away. I do not understand why we should not adopt this measure. It may be said that the true principles of Hindu Dharm stand in our way, we are not well advised in adopting contrary measures. May I humbly submit that the first *sloka* in Mahabaratha begins in this manner that because there are not many Kshatriyas in the land, therefore some Brahmins may be brought and asked to procreate Kshatriyas. All our religion and our Vedic lore do tell us that among Hindus such marriages were not infrequent. As a matter of fact, before the caste system became stereotyped, it can very well be imagined that there was no prohibition among the Hindus for intermarriage so far as caste was concerned. Therefore taking it from the radical point of view, I should understand that there is no special difficulty with regard to this measure.

But all the same, the point that I wish to make is that it is an enabling measure. It does not force any person to marry outside his caste. If a person so wishes, if a young man and a woman are so minded, if their parents are so

minded, all I want is that the couple should be enabled to marry and their offsprings should be legitimate.

At present, if a Hindu wants to marry outside his caste, it is not as if he cannot effect his purpose by resort to falsehood. According to the Arya Marriage Validation Act he can very well marry any Hindu outside his caste. Supposing a person does not belong to Arya Samaj, why should he have recourse to falsehood to effect his purpose ? Therefore, the thing which the law should care about is that persons be enabled to do things in a legal manner. I also know that according to the provisions of the Special Marriage Act (Act III of 1872) it was possible for a Hindu to contract a marriage under its unamended provisions provided he declared that he was a non-Hindu while continuing to be a Hindu. A very nice paradox is given in the Hindu

Code by H. S. Gour in para 457. This is what it says:

" It will thus be seen that the Special Marriage (Amendment) Act has created a paradox. If the Hindu declares himself to be a non-Hindu and marries, he remains subject to Hindu Law. If he does not so declare, he ceases to be subject to Hindu Law, giving rise to a conundrum : When is a Hindu a non-Hindu ? The answer is : When he marries as a Hindu under the Special Marriage (Amendment) Act. "

When the Act of 1923 was passed—1 have read the proceedings of that time—it appears that Dr. Gour was driven to a corner and he had to accept a situation which would never have been accepted had he been free. According to the Special Marriage (Amendment) Act, the situation is very strange. If a person wants to marry outside his religion, say, a Hindu wants to marry a non-Hindu, then under the Amendment Act, " their previous rights are unaffected to the extent provided in the Caste Disabilities Removal Act. " But yet what happens if they marry ? The disability which they will suffer from, I am going to describe from Gour's Hindu Law. "Their previous rights are unaffected to the extent provided in the Caste Disabilities Removal Act. They no longer possess the right of adoption. And if the person so marrying is an adopted son, his adoptive father may, if so chooses, make another adoption. " So that the poor man who wants to marry, his rights as an adopted son go away and his father is competent to have another adoption. Then, " such marriage has the effect of dissolving the joint family. " This is another very great disability. If a person wants to marry a non-Hindu, he must cease to be a Hindu so far as the joint family is concerned. Then, " succession to their property and to the property of their issue is regulated by the Indian Succession Act. " My humble submission is that there is no reason why we should undergo these disabilities. Why should a man wants to marry a non-Hindu suffer from these things, which go to show that as a matter of fact he

must renounce all the laws which are dear to him and which he has inherited from generations. This is a wrong provision and leads to fraud and many other evils. There is no doubt that from the old position the present position is a bit better. I know of cases in which Arya Samajists married before the Arya Marriage Validation Act was passed and for years together they did not declare themselves as husband and wife. They were afraid of declaring, and what would happen to their off-spring ? It may be said that at present the Hindu Code Bill is on the anvil, so where is the necessity for this measure at this stage ? I would beg of you to allow me to meet this point.

In the first place, my submission is, I do not know when the Hindu Code Bill will be passed. It is doubtful if it will be passed in this session, next session or some other session. We do not know. Secondly, if this Bill is accepted, it would pave the way for such of the provisions of the Hindu Law as are given there and so it will be a help to passing that law. What would happen to many people who would not marry on account of this law not being there ? Or if a person dies will his rights to property not be affected ? At the same time, if this Bill is not allowed to be passed into law, many cases which could be governed by this law will be governed by the present law and people will suffer. The whole nation shall suffer in so far as we will not be able to make for conditions which would go to solidify the nation and make it homogeneous.

It may be said, it is a case of piecemeal legislation. We all know many instances of such piecemeal legislation. We know that we passed in 1946 the Act relating to validity of marriages between subsection of castes and then we passed in Bombay, the prevention of Bigamous Marriages Act; and many other laws have been passed. I do not know of any other objections that may be raised to this Bill. It is a very small measure and this is a one-class Bill. All that it says is that previous marriages will be regarded as valid and in future such marriages will be valid. It does not propose to do anything else. I did not, as a matter of fact, venture to come before the House with a straight motion that it be passed into law because I am afraid it is a convention of this House that all these measures should be taken to the Select Committee.

I am anxious that in this session, we should be able to pass this measure into law, so that so far as the public is concerned, they will feel convinced that we mean business and we want to evolve a classless society. I know what I am saying may not be liked. I was taken to task for expressing such an opinion in the papers an opinion which I read today to the House but in this vital matter, we are not to fear anybody. Mahatma Gandhi has told us we must have a class-less society. This is the right way to have a class-less society. All differences between those people who are opposed to each

other from the point of view of social rights, economic rights and political rights, will disappear and we will have one class-less society, if we adopt a measure like this. I would beseech the House to kindly pass this measure in this session after referring it to the Select Committee today.

**Mr. Deputy Speaker:** Motion moved :

"That the Bill to provide that marriages between Hindu, Sikhs, Jains and their different castes and sub-castes are valid, be referred to a Select Committee consisting of Giani Gurmukh Singh Musafir. Sardai Iluknm Singh. Shri M. Anatha-sayanam Ayyangar. Shri Deshhandhu Gupta. Shrimati G. Durgabai. Shrimati Renuka Ray, Shri Ramnath Goenka. Dr. Bakshi Tek chand. Lala Achint Ram. Ch. Ranbir Singh, Shri Mahavir Tyagi and the Mover and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five. "

The usual practice is to fix a date by which the report may be submitted to the House. With instructions to report by what date ?

**Pandit Thakur Das Bhargava:** By the end of this month, say the 28th of February.

**Mr. Deputy Speaker :** With instructions to report by the 28th of February, 1949.

**Shri K. Hanumanthaiya** (Mysore Stale) : Sir. I have great pleasure in welcoming this Bill. Pandit Thakur Das Bhargava has advanced very good reasons in support of it. They hardly need any support or addition. Before August 1947. our watch-word was ' freedom ' and Mahatma Gandhi gave us the phrase ' quit India ' and after the attainment of freedom, Sardar Patel has given us the word consolidation. He is doing it on the political front and that is the greatest achievement that this country can boast of. (*Interruption*). And we have to do it also—may I say humbly with all sincerity and not with any levity—on the social front also. The great danger to India is ' disruptive tendencies ', which are called communal tendencies and the marriage instruction is the bastion which keeps these various differences intact and in perpetuity. This measure in a very humble fasion makes a beginning to abolish those distinctions in times to come and consolidate the Hindu society to begin with . I heartily welcome this measure and I suggest to the mover of this motion that he can take another Member into the Select Committee and I suggest Shrimati Annie Mascarene, M.A.B.L. being taken into the Select Committee.

**Pandit Thakur Das Bhargava:** I have no objection to add the name.

**Shri K. M. Munshi** (Bombay : General): I beg to support this motion. My honourable friend. Pandit Thakur Das Bhargava was pleased to describe this measure as a small measure. I beg to differ from him. It is a very big measure

and a very important one. It should have been passed not now, but forty years ago. When the question was first raised before the courts and when the courts held in different provinces that marriage between the Hindus of different castes were invalid for one reason or the other. But in those days the Government benches were not prepared to allow the Hindu community to be dynamic and wanted to perpetuate the old customs which were enshrined in text books composed 700 or 800 years ago. I remember a case. Sir, I think it was some 40 years ago, when the validity of the marriage of a widow, whose husband had died several years ago was raised before the Bombay High Court and the High Court held that after long years of married life and leading case where I tried for four years to establish that the marriage bet-after having grand children, her marriage was invalid because she happened to belong to a higher caste than her husband. I was concerned in another leading case where I tried for four years to establish that the marriage between a Hindu of higher caste with a wife of a lower caste was invalid. But for the fact that Sir Lallubhai Shaw was a judge of catholicity, perhaps I would have won the case, but even then the validity of *anuloma* marriage as we call them,—between the husband of a superior Hindu caste and the wife of an inferior Hindu caste—is not accepted as valid in some of the provinces. The question has also risen with regard to Hindus and Jains in part of the country. Hindus and Jains marry freely, but the point has always come before the lawyers for opinion whether a marriage between a Hindu and a Jain was valid. Now these are questions which ought to have been solved, as I said, years and years ago. But we have reached a stage when this must be solved immediately.

My honourable friend. Pandit Thakur Das Bhargava referred to the special case of the Punjab. It is not a special case of any particular province; it affects the whole of the country. On account of education, on account of freedom marriages between members of different castes take place. But they find themselves in great difficulty on account of this doctrine of Hindu Law. I know, not one or two, but dozens of cases where the parties merely profess to marry under the Civil Marriage Act, though they do not want to do it; they hated doing it; they do not want to disturb the joint family; they do not want that the succession Act should apply to them; they do not want to separate themselves from their parents; but because of the unfortunate state of the law, they have to marry under the Civil Marriage Act. Therefore, I submit. Sir, this a crying grievance which requires to be remedied as early as possible. I am glad that the mover has accepted your suggestion about the 28th of February and this Bill should be passed as early as possible.

There is one little point which I should like to mention and I am sure this defect will be duly rectified in the Select Committee. The

words as they stand are:

Notwithstanding any text, rule, interpretation of Hindu Law, or any custom or usage to the contrary, no marriage among Hindus is or will be deemed to be invalid by reason of the fact that the parties thereto belong to different religions, castes or sub-castes.

This might lead possibly to a construction that this provision only applies to marriages between parties who are alive. I think it should be made perfectly clear that even marriages of this character which have taken place in the past and in respect of which the question of succession arises should be deemed valid hereafter. I am sure proper rectification will be made in the Select Committee. I therefore, Sir, heartily support this motion.

**Shri Deshbandhu Gupta** (Delhi): I rise to support the motion which is before the House just as my honourable friend, Shri Munshi has pointed out, I also feel that it is a really very important measure. For many years one thing which has been standing in the way of Hindu solidarity and also in the way of our national solidarity is this division of the Hindu society in castes. I feel the time has come when we should pass a measure like this which seeks to abolish these artificial barriers without any further delay. I know of instances where some of my close friends who did not believe in civil marriages had to resort to civil marriages, simply because they happened to choose a mate which belonged to a different caste. You are aware, Sir, that the Arya Samaj has always been a believer in caste system by ' *Guna* and *Kama* '. In spite of the fact that the founder of the Arya Samaj preached that caste and from the very beginning they advocated that there was no caste by birth, Arya Samajists also had to suffer from the same disability from which other people are suffering today.

It was after many years of struggle that the Arya Marriage Validation Act was passed. But, I find public opinion amongst Hindus has also advanced sufficiently and not only Arya Samajists but today many more Hindus do not recognise the artificial barriers placed by the caste system based on birth. Therefore, there is no reason why they should be forced to have recourse to the Arya Marriage Validation Act or to the Civil Marriage Act. Today, when public opinion has advanced, and when the caste barriers that have stood in the way of the solidarity of the Hindus and in the way of creating a national feeling, have gone, I feel the passage of a measure like this should not be delayed.

There may of course be some point in saying that the Hindu Code is coming and therefore we should not have any piecemeal legislation. But along with many of my friends I too believe that a measure of this nature, which is in no way opposed to the reformist ideas contained in the Hindu

Code, should not be delayed. Although, my honourable friend Dr. Ambedkar would like the Hindu Code to be passed into law this very session, many of us do not share that view. It may take time. After all, that is a very important measure and has got many controversial clauses. Therefore, I would urge that this measure should be welcomed by us and its passage should not be delayed.

I wholeheartedly support the motion moved by my honourable friend Pandit Thakur Das Bhargava and I hope Dr. Ambedkar will also accept it and that the house will pass this small measure which is of great importance to Hindu Society, in this very session.

**Dr. Bakhshi Tek Chand** (East Punjab : General) : I wholeheartedly support the motion which Pandit Thakur Das Bhargava has made for referring this Bill to the Select Committee. The Bill has so far received support from various quarters of the House and I do hope that not a single discordant note will be raised against it.

The Bill, if I may say so, is no new measure. A Bill almost on identical terms was introduced in the old Imperial Legislative Council as it was then called, in 1919 by the late Mr. Vitthalbhai Patel. That Bill was circulated for opinion. Of course, different opinions were expressed, the orthodox element opposing it, officials opposing it and a number of persons and societies supporting it. But, before the Bill could come up for consideration before the Council, the Montagu Chelmsford Reforms came into operation the council was dissolved and the Bill lapsed. After that. Dr. Gour attempted in 1923 to modify the old Bill of 1872 but then also, there was opposition and the Bill had to be modified in several particulars. It was only in the form of a civil marriage that persons of different castes or different sub-castes of Hindus could marry, sacramental marriages are not permitted. With regard to sacramental marriages under the Hindu Law, the position is different in the different provinces. Some provinces, as has been pointed out, permit what are called *Anuloma* Marriages ; other provinces do not allow that. In the latter provinces, the courts have held that though in some of the *Smritis*, *Anuloma* marriages were permitted, they have become obsolete and they are not now recognised. In almost all Provinces, it is held that *Pratiloma* marriages are invalid. In the Punjab and in some other provinces, where custom is the rule of decision, marriages between certain castes are allowed, but between certain other castes are not allowed. I think the time has now come when a bold step should be taken and this measure should be placed on the Statute book. No doubt, under the Hindu Code which is now before us, provisions to this effect have been made. The Hindu Code Bill is however a very comprehensive measure dealing with different subjects and covers a very much wider field.



There is much opposition to some portions of it. We do not know how long it will take for the Bill to pass, in what form it will be passed, or whether it will be passed at all. (*Shri L Krishnaswami Bhuralhi*: " It will be passed. ") It will certainly take time. There is no reason therefore, so far as this matter is concerned, to delay the passage of this simple measure, with which I think most people are agreed. I therefore support the motion.

**Shri Mahavir Tyagi** (U.P. : General) : I do also want to have the honour of recording my support to this Bill of great reform as my honourable friend Mr. Munshi has said.

It is long since india has suffered on account of communal differences. Marriages are the root cause and elections the ' fruit-cause ' for all these differences; because, it is primarily at the time of the marriage that one enquires into the caste of the other. Every time when marriages are held, castes are enquired into. The next occasion, when the caste of a person is enquired into, is when one stands for election. Now that we have decided to have, joint electorates, we have to a great extent done away with the ' fruit-cause ' of the communal evil. Thus politically we have put ourselves on the right track. And as my friend Mr. Hanumanthaiya has just now said, the credit goes to the Honourable Sardar Patel for giving us political consolidation in the country. After this political consolidation, our next immediate need is to have social consolidation. This Bill will provide this need. I am sure, if this Bill is passed into law, marriages will be free. I am a believer in free marriages. Now that India is free marriages must also be free and there should be no restrictions. I am sorry that the Bill has come at a very late stage in our lives: but let us pass this bill for our future generations to practice it. I hope that the country will enjoy the freedom given by this Act. I wholeheartedly support the motion.

**Shri Upendranath Barman** (West Bengal : General) : I also beg to accord my whole hearted support to the Bill and its reference to the Select Committee. In my mind, I am convinced of one thing. The circumstance that stands in the way of our national sense is the caste barrier. So long as it lasts, the different sections of the Hindu community and other non-Muslim communities cannot unite together and imbibe a sense of nationality in its true sense. So long as one knows that he cannot marry his son or daughter with the son or daughter of his neighbour, the true sense that they are one cannot come. I think that by passing this measure that barrier will be won. It is the sense of kinship that is the real basis of national sense and I wholeheartedly support this Bill and I hope that it will be passed into law as soon as possible.

**The Honourable Dr. B. R. Ambedkar** (Minister for Law) : With regard to this Bill, there cannot be any difference of opinion between myself .and my

honourable friend the mover for the simple reason that the Bill is merely a part of the Hindu Code which I am sponsoring. My only objection to the Bill is that the Legislature having accepted the principle that the Hindu Law ought to be codified, it is wrong now to proceed piece-meal with the legislation. I have no objection, as I said, to the principles underlying the Bill. In fact those are the very principles which are embodied in the Hindu Code and therefore what I will suggest to my honourable friend is that either he should withdraw this Bill or postpone the consideration of the Bill so that we may know exactly what happens to the Hindu Code.

I am afraid having regard to the fact that, I am sponsoring the Hindu Code and having regard to the fact that there being the motion before the house for consideration of the Bill as reported by the Select Committee, I am afraid I cannot take any other attitude than the one I have taken.

**Ch. Ranbir Singh** *rose*—

**Shri L. Krishnaswami Bharathi** (Madras: General): How can he be allowed to speak ?

The closure motion has been put.

**Mr. Deputy Speaker:** I allowed Dr. Ambedkar to speak and he is not the sponsor. The question was not put.

**Ch. Ranbir Singh** (East Punjab : General): (*English translation of the Hindi Speech*) Mr. Deputy Speaker, Sir, I have great pleasure in supporting this measure because I belong to that community amongst the Hindus who have always believed in the principle of this Bill from the very outset. If there was any community amongst the Hindus which ever established relations outside its own sphere and that there existed no differences, it was the Jat community. It is true that there did exist some such element of difference and social ostracism but that was negligible. The very fact that this Bill will go a long way to establish throughout our country a principle in which we have believed since centuries past, affords me great pleasure to support this.

Secondly, just as my honourable friend Mr. Tyagi has stated, this will banish our mutual differences which were responsible for our slavery. By the integration of small states our leader the Honourable Sardar Vallabhbai Patel has consolidated our country into one and that problem has been well solved. This Bill is a very good measure for solving our social problems.

So far as the Hindu Code Bill is concerned that is a big thing. It is not yet known whether or not the country or this House accepts it. It contains some provisions over which our leaders have expressed some sort of difference. I, therefore, fail to understand how far it is correct to shelve or reject this Bill simply for the reason that it forms part and parcel of that Bill, because if the Hindu Code Bill is passed, this measure will naturally be incorporated in it. If

that is not passed, this Bill will at least have chances of being passed.

With these words I whole-heartedly support this.

**Shri K. M. Munshi** : Is it permissible for me to answer a point made by Dr. Ambedkar?

**An Honourable Member**: Pandit Bhargava can deal with it.

**Pandit Thakur Das Bhargava** : Sir. I am very glad that all sections of the House have supported this measure. It is a measure of such a kind that I could not foresee with the highest flight of imagination that any sort of objection could be raised and I am very glad that this measure is liked by everybody. One objection has been raised and that is that since the Hindu Code Bill is on the anvil therefore, we should not proceed with this Bill. If the principles of this Bill and the principles which are the subject matter of the Hindu Code were antagonistic to each other, I could understand the objection, but where this measure proceeds on the same basis as the Hindu Code Bill, if we pass it in advance, it will really pave the way for the passing of the Hindu Code. I cannot understand how the passing of this will obstruct the passing of the Hindu Code—really it will accelerate its passage. May I enquire where is the law or rule or convention that if a Bill like the comprehensive Hindu code Bill is on the anvil therefore another Bill cannot be passed. There is no such convention. I cannot understand that if a measure is there which covers one of the points covered by another measure, therefore the second measure should not be passed.

Bakshi Tek Chand has pointed out that this measure was a subject matter of a Bill in 1919 and this measure is associated with the name of our revered President V. J. Patel. Now in point of time I think so far as Hindu Code is concerned, this kind of measure is much anterior. In a matter of this kind, these technicalities even if they be valid, should not be allowed to stand. What would happen to those thousands of men and women if this Hindu Code Bill is not passed and I think it is not going to be taken clause by clause this session and it may go on to September or October and not passed in this Session because it is a controversial measure and it may take a year; what would happen to those young men and women who desire to marry according to the provisions of this Bill and our activities which certainly conduce to the formation and consolidation of one nation ?

Sir, it is not a matter of joke. I am only helping Dr. Ambedkar whose marriage also will be legalised by this Bill. Why should he laugh at this ? This may or may not be applicable to him yet the disabilities if any will be removed. I know hundreds of people want to marry under this and is it wrong to marry under this rule ? I for one deprecate that anyone should place any obstacle to this Bill being passed in this session. If this measure is not

passed in this Session all our efforts and Gandhiji's efforts will be futile. So my submission is this and I beg Dr. Ambedkar to kindly withdraw his objection and agree to the passage of this Bill as soon as possible because this would also help him in getting this relevant portion of the Hindu code passed.

**Shri K. Hanumanthiya:** Has the honourable member accepted the name of Shrimati Annie Mascarene which I have suggested ?

**Mr. Deputy Speaker:** Yes, I suppose the honourable the Law minister wants to know the number of men on the waiting list.

The question is:

" That the Bill to provide that marriages between Hindus,,Sikhs, Jains and their different castes and sub-castes are valid, be referred to a Select Committee consisting of Giani Gurmukh Singh Musafir, Sardar Hukum Singh, Shri M. Ananthasayanam Ayyangar, Shri Deshbandhu Gupta, Shrimati G. Durgabai, Shrinati Renuka Ray, Shri Ramnath Goenka, Dr. Bakhshi Tek Chand, Lala Achint Rain, Ch. Ranbir Singh, Shri Mahavir Tyagi, Shrimati Annie Mascarene, and the Mover, with instructions to report by the 28th February 1949, and that the number of members whose presence shall be necessary to constitute a meeting of the Committee shall be five. " The motion was adopted.

HINDU CODE—contd.

**Mr. Speaker:** The honourable Dr. B. R. Ambedkar.

**Pandit Thakur Das Bhargava—rose.**

**Shri Jaspal Rai Kapoor** (U. P. : General): Mr. Speaker, Sir, I have to raise a point of order which, if accepted, will bar any further discussion on the point of order raised in the previous session by my honourable friend Mr. Naziruddin Ahmad. I therefore, submit that I be permitted to place my point of order for your consideration.

**Mr. Speaker :** As Pandit Thakur Das Bhargava was on his legs, I think I ought to hear him first. I do not anticipate what he is going to say; I have my own views on the point of order raised but I will consider what Pandit Thakur Das has to say.

**Pandit Thakur Das Bhargava** (East Punjab : General) : Sir, on the last occasion when the motion was made by the Honourable Dr. Ambedkar, Mr. Naziruddin Ahmad took a point of order on the point that the Bill considered by the Select Committee was not the Bill referred to it by the House. While that point was being considered. I was submitting for your consideration some grounds why the point of order was of great substance. While that was being done, you were pleased to stop the discussion and shorten the matter, as would appear on page 778 of the Proceedings, dated 31st August 1948. At

that time, Sir, you were pleased to tell us what was passing in your mind and you told us that you will consider at the proper time two or three questions which are given on page 779 of this report. The two questions which seemed to agitate your mind were, firstly, whether the Select Committee went out of its way and went beyond the scope, and secondly, whether the Select Committee has gone beyond the scope of the reference. These were the two questions. The debate was taking place when ultimately you decided as given on page 780, that you would study all the facts and then give a ruling. With regard to that, I beg to lay some points for your consideration in regard to the point of order raised by Mr. Naziruddin Ahmad.

**Mr. Speaker:** As I see from the report, what I stated there was this—1 have not got the printed report but I have got the proof-sheets here. After the Honourable member Shri Biswanath Das had raised a point, I stated as follows:—

" As I said, I am not deciding this matter at all. I am keeping open the whole thing including the point of order, because it will be seen that it involves large questions of fact and I must study all these things myself, which I have not yet done. Shall I leave the matter as it is?"

Therefore, I left it for me to study it and I can now say that I have studied it. Whatever may have been said by honourable members with reference to the point of order, I have studied the report of the Select Committee, I have studied the first Bill and I have studied, of course, the other draft which was alleged to have come before the Select Committee. If the honourable member has to say anything with reference to that he may.

**Pandit Thakur Das Bhargava :** It is only with reference to that that I propose to\* speak just now. As a matter of fact, I also raised this very point of order, but Mr. Naziruddin was more fortunate in catching your eye. Therefore, I have something to say on this point.

**Shri Mohan Lal Gautam (U. P. : General) :** On a point of order to this point of order. Sir, according to the Rules of Procedure, I do not find any provision for any point of order after a report has been presented to this House. I would request the honourable member to quote that rule so that I may consult it and see for myself whether the *point* of order raised by the honourable member is not out of order.

**Mr. Speaker :** These are obvious matters which need not be argued. If we differ on the substance of the matter, let us devote time to that substance rather than take up the time in the technicalities of the matter. If people are against the Code then it is a matter of substance. If they are in favour of it, even then it is a matter of substance. But let us not take the time of the House in technicalities.

Subsequently, the point of order mentioned was that the Bill which was referred to the Select Committee was, on facts, not the Bill which the Select Committee considered and that therefore the report is based on something else. That is the point of order, put in short, and on that point of order arguments were addressed. If the honourable member Pandit Bhargava has to address or speak on facts, matters would stand differently; the matter is, I believe, covered amply by what Mr. Naziruddin Ahmad has stated. Has he to invite my attention to any other facts ?

**Shri Jaspal Roy Kapoor :** May I respectfully request you. Sir to permit me to place my point of order before you ? It relates to the competency of this House, in the present session, to deal with this question at all; also, whether the point of order raised by my friend Mr. Naziruddin should be discussed in this session at all? For, if my point of order is accepted it will shut out all discussion on the subject in the present session.

**Mr. Speaker:** I think I will go step by step. Let the first point of order be disposed of. Assuming that the first point of order goes in favour of the Bill, then the second point of order which the honourable member has raised is competent and therefore he may raise the point later on.

**Shri Jaspal Roy Kapoor:** My submission is that even the discussion of the point of order raised by Mr. Naziruddin Ahmad is a point which should be considered by this house and the question is whether it is competent to discuss the subject at all.

**Mr. Speaker:** I do not agree that I should take that point first. It will be for the Chair to decide whether the Select Committee considered the Bill that was referred to it or something else, and whether, therefore, its report should or should not be taken into consideration. After that is decided, it is perfectly competent for the honourable member to point out to me any points or any law or any practice by which this House is not competent to take into consideration the present Bill. That is the better way. Let us save time.

**Shri Jaspal Roy Kapoor:** May I say one word. Sir ?

**Mr. Speaker:** No, no Pandit Bhargava.

**Pandit Thakur Das Bhargava :** Sir, I only propose to lay before you some facts and some law as it would apply to those facts. For instance, I beg to point out that the proceedings before the Select Committee was an abuse of the rules of this House. The privilege of this House has been violated by the Select Committee and by the procedure of the Law Department. Secondly, if my facts are correct, another Bill was considered and not the Bill which was referred to it by the House. The question which arises then would be a question of law, whether such a procedure was justified and whether this House should consider this report as a report on this Bill which was referred

to the Select Committee or whether it is a document which is not valid in law and is not a legal document. I will therefore confine myself to the two types of questions which I submit are quite related. In regard to the substance also, with your permission, I will subsequently have something to say provided your ruling is that this question is also relevant. In my humble opinion, the question divide itself into two parts. Number one, whether the report which has been presented to the House is a good report from the procedural point of view. Number two, whether the report has gone beyond the scope of the Bill. I propose to address the House on the second question subsequently.

First of all, with your permission, I will address the House on the first question before laying certain facts before the House. My humble submission is that according to what we have got in the Select Committee's report and from the papers which have been circulated to us and which are found in the Library, I have come to the conclusion that after the Bill was referred to the Select Committee, the Law department just substituted another Bill for this Bill, and this Bill was considered by the Select Committee. I do not know whether these facts are absolutely correct, but I have consulted some members who were in the Select Committee and they have informed me about it and at the same time from the report of the Select Committee also it appears that as a matter of fact .....

**Mr. Speaker:** I am afraid the honourable member is practically repeating what the honourable member Mr. Naziruddin Ahmad has said. It is the same thing. I have gone through the report myself bearing in mind the points raised and while I would like to give the honourable member the fullest liberty to place any other facts not included in Mr. Naziruddin Ahmad's speech, I do not think we should go into the same repetition.

**Pandit Thakur Das Bhargava:** I do not like to repeat. I only want to know if these facts are taken to be correct. If ultimately another honourable member gets up and says these facts are wrong, then the whole argument would fall down. Therefore, I want to place before you how I have come to the conclusion that these facts are correct. If you take them as correct, I do not want to trouble the House and your goodself. I submit that as a matter of fact it appears from the report of the Select Committee itself that the substituted Bill was alone considered, because from the majority committee's report as well as the dissentient's report it appears that no other Bill was considered and the Bill which was referred to the Committee was not at all considered.

Now, Sir, Dr. Ambedkar has kindly placed before us a comparative statement. If you will kindly see these tables, there are two parts, one shows how from this Bill the original Bill was different. He has given another table showing the difference between the Draft Bill and the Select Committee

report. This also shows that only the re-drafted Bill was considered and not the original Bill. Any way, taking this to be the right thing, if it is accepted that the re-drafted Bill was only considered, the question arises before you whether the re-drafted Bill could be considered by the Select Committee or not, and if this action of theirs is not tantamount to the breach of privileges of this House as well as abuse of the powers that this House granted to the Select Committee. Now, Sir, I may not be taken to say that there was any wrong motive behind it; such a course may have been intentional or non-intentional; it may have been done with the best of motives or with the worst of motives; I am not concerned with that. I am concerned with one central fact that the original Bill which this House referred to the Select Committee was never considered by the Select Committee. ...

**The Honourable Shri K. Santhanam** (Minister of State for Railways and Transport) : On a point of order, I wish to know whether this House can go into the manner in which a Select Committee has dealt with a Bill. In that case, it would require verbatim reports of all proceedings in a Select Committee. We can reject the report or accept the report or do anything with the report but how the Select Committee dealt with it is a matter which, I think is not relevant and it is not the practice of the House either to go into it. Otherwise, every figure Select Committee will have to give us a verbatim record of its proceedings, so that we can judge of the propriety. . . .

**Mr. Speaker** : I am afraid various points of order are being raised and stated too widely. As regards the present point, if the position is that the Bill which was sent by this House was not considered at all by the Select Committee, I think it would be perfectly competent to go into the question as to whether the Select Committee did or did not consider. Then the question will arise as to how far it would be permissible to go into the proceedings of the Select Committee and to that my present reaction is that this House or myself will not be sitting as a fact-finding committee or court, but we shall take into consideration—we are entitled to take into consideration—what the Select Committee itself has stated in its report, and therefore, the matter will be more or less one for inference—coming inferentially to some conclusion as to what the Select Committee did and not by taking evidence of every member of the Select Committee and taking extra evidence. Now I may point out to my friend Pandit Bhargava, that in spite of all that he has said the argument is not being advanced any further. Whether you call it a breach of the privileges of the House or abuse of procedure, the argument, in short, comes to this—that the Select Committee considered a substitute Bill; that it did not consider the original Bill sent by this House, and that this conclusion is based on certain remarks or observations in the Select Committee report—



majority as well as the minority report—and therefore he infers—to state more correctly—from these documents that the original Bill was never considered. That, in short, is the point of order. The question of breach of privilege' or abuse of procedure will arise, if we come to the conclusion that the Select Committee did as he infers, but if we come to the conclusion that the Select Committee was not guilty in the manner in which he infers it to be, then the question of breach of privilege or abuse of procedure does not arise at all. I can assure honourable members that I have carefully gone through every point that the honourable member is going to read from the report of the Select Committee and, perhaps, something more also, and I have my own conclusions about it. I think I can make the whole thing short by stating what I have felt about the Bill and decide the matter rather than take up the time of the House. That is my feeling in the matter. (*Some Honourable Members:* "Quite so. Sir. ") Anyway, we are not going to finish this Bill today. We can just clear the ground and I think without further going into arguments, I may perhaps ....

**Pandit Thakur Das Bhargava :** I do not want to go further into arguments after having heard from you how things have taken place, but I do wish to place before you some of the ruling which I have got which go to show that this Bill as emerging out of Select Committee is absolutely unwarranted, illegal and' vitiates the entire report of the Committee and before the House there is no report at all. This is my submission. If you will permit, I will place some rulings before you.

**Mr. Speaker:** However, the rulings follow certain facts. In this case, it is alleged that, as a matter of fact, the Select Committee have failed to consider the original Bill. If that is established, then we shall have ample time to consider the rulings.

**Pandit Thakur Das Bhargava:** Nobody is denying this fact.

**Mr. Speaker :** That is just the point, as the honourable member will see. When I give my ruling which I have carefully prepared after reading all the papers. If any further points arise after the facts as stated by me are accepted, then those points of order may be considered.

**Shri M. Tirumala Rao** (Madras : General) : Before you give your ruling, is there no other method of knowing the truth except by inference ?

**The Honourable Dr. B. R. Ambedkar** (Minister for Law) : May I, with your permission, intervene for a minute to correct an impression which my friend Pandit Bhargava has sought to create in this House that the original Bill which was referred by this House to the Select Committee was never before the Select Committee ? I think it is a gross mis-representation. If my honourable friend were to refer. . . .

**Mr. Speaker :** I have myself studied the position in great details. I shall clarify it by reading out my decision.

**Pandit Mukut Bihari Lal Bhargava** (Ajmer-Merwara): I have additional facts.

**Mr. Speaker:** Order, order.

**Pandit Mukut Bihari Lal Bhargava:** There is one additional fact which has not come to the notice of the Chair. I wrote a letter to the Law Department to find out whether any re-drafted Bill was printed. The information given to me was that only a few copies were printed and they were available in the library of the House. I have referred to that Bill and it is a fact that a re-drafted Bill was printed in July 1948 prior to the meeting of the Select Committee. That Bill was considered clause by clause by the Select Committee and that is the Bill that has emerged from the Select Committee with its report. The report mentions this. Therefore my respectful submission is that that re-drafted Bill may be taken into consideration to find out whether the Select Committee applied its mind to the Bill that was referred to it or some other re-drafted Bill that was printed under the signature of Dr. Ambedkar, after scrutiny of the original Bill and absolutely in a different form. That is a very important material and additional fact which I respectfully bring to the notice of the Chair before the ruling is given.

**Pandit Thakur Das Bhargava:** I have got a copy of that Bill with me.

**Mr. Speaker:** I have some facts which honourable members do not have.

The Point of Order that the Honourable the Law Minister's motion for consideration of the Select Committee Report on Hindu Code is incompetent as raised by the honourable member Mr. Naziruddin and supported by a few other members on 31st August 1948, is based on a narrow limit of facts. The objection raised is presented as a chain of reasoning in the following form:

" What the Select Committee considered was a ' substitute ' of the original Bill in the form of ' a revised draft '. Therefore the Select Committee did not consider the Bill referred to it, but ' a new document ', and the present report of the Select Committee, being a report on a new document, there is no Select Committee Report on the original Bill. The Honourable the Law Minister's motion for consideration of the Bill, as it emerged from the Select Committee, is, therefore, incompetent ". That is the substance of the Point of Order. (*Shri Mahavir Tyagi* : " Is that your ruling ?") I believe I have stated the point correctly.

None of the members, Mr. Naziruddin Ahmad, Pandit Thakur Das Bhargava and Srijut Biswanath Das, who raised or supported the Point of Order, were members of the Select Committee and, naturally, therefore, have no personal knowledge as to what was considered at the meetings of the

Select Committee. They, therefore, relied upon some statements in the report of the Select Committee and inferred that the original Bill, as referred to the Select Committee, was not taken into consideration by them.

The 'question thus raised is purely a question of facts, namely, whether the Bill referred to the Select Committee, meaning thereby the various substantive provisions thereof, as distinct from the form or sequence in which they were put, were or were not considered by the Select Committee; whether the Select Committee did or did not apply their mind to the substantive provisions of the Bill as referred to them.

It is not disputed that the Select Committee had a right to add to or to delete from or to improve upon the provisions of the Bill as referred, provided the additions, deletions or improvements, etc. suggested by the Select Committee are within the scope of the Bill. I need not therefore, enter into this aspect, as no such question about the Select Committee having gone beyond the scope of the Bill is raised before me.

I may now examine, in the light of the written as well as oral evidence before me, the statement of facts as formulated by the honourable members who have raised the Point of Order.

I may shortly state the facts as to how the Bill that was introduced came to be framed. As stated in the Statement of Objects and Reasons, the Central Government, by their Resolution dated the 20th January 1944, 'appointed a Hindu Law Committee for the purposes of formulating a Code of Hindu Law, which should be complete as far as possible.' This was done in pursuance of 'a growing public opinion in the country in favour of a consolidated and uniform Code dealing with the different topics of Hindu Law for all the provinces and for all sections of the Hindu Society'. It was also felt that, in view of the 'present conditions and trends in Hindu Society' there is a great need to alter the law so as to make it fit the new pattern, to which the Hindu society seems to be rapidly adjusting itself.'

When the motion for reference of the Bill to the Select Committee was carried on 9th April 1948, there was hardly any time for honourable members to express themselves on the substance as well as the form and the drafting of the Bill. The Ministry of Law, having felt that the Bill 'as drafted by the Hindu Law Committee did not conform to the canons of a Code', decided to revise the draft of the Bill and to remove those defects, so as to enable one to have 'a full and complete picture of the provisions of the Code'. They, therefore, undertook the task of re-arranging the parts and division's of the original Bill in consecutive sections and in a logical sequence, and also made some further suggestions as they thought proper for consideration by the Select Committee. The Ministry of Law simply placed before the Select Committee a

sort of a proper form in which the original Bill could have been shaped by the Select Committee themselves at their meetings or they could have directed the draftsmen to carry out the changes.

It may be noted here that, while circulating the Code in a revised form, the Ministry of Law supplied to the members of the Select Committee an index also giving therein, for facility of reference, the place of a section in the revised Code with the corresponding section in the original Bill, as prepared by the Hindu Law Committee. The members of the Select Committee had thus before them, at all times and at every stage, the provisions of the Code as contained in the original Bill. The Ministry of Law further invited the attention of the members of the Select Committee to changes of substance suggested by them in the revised draft. It was, therefore, clear that at all stages of deliberations by the Select Committee of the provisions of the Bill, both the revised and the original were before them and the deliberations had proceeded on a comparative study of the original provisions and the provisions contained in the revision as suggested by the Ministry of Law.,

Coming to the question of evidence as to the above facts, the only member of the Select Committee who spoke with reference to the Point of Order was. Pandit Balkrishna Sharma. Pandit Balkrishna Sharma stated in the House: " The Bill which the House asked us to consider was always before us. " The evidence on record consisting of the main report, as also the dissenting minute, amply support this statement. The honourable members, who have raised this objection, relying upon passages in the Select Committee Report or the Dissenting Minutes seem to take certain passages out of the context and by themselves. This is what the main report says:

" We, the undersigned, having considered the Bill "—not the revised draft— " have now the honour to submit etc. " This is how they begin the Report.

They speak of having considered the Bill and not the revised draft.

But further they say as follows:—

"The Draft Hindu Code, as introduced in the Legislature did not receive any departmental scrutiny prior to its introduction and the Ministry of Law have now produced a revised draft, which, in our opinion, is more satisfactory in several respects. This revised draft does not make any substantial changes in the body of the original Bill. but within the framework of the original Bill, it has recast it so as to be in the form in which Bills are usually presented to the Legislature. "

So it will be clear that the Select Committee had applied their mind to the original Bill and had come to the conclusion that there was revision thereof,

not in substance but in respect of the form only.

They also mention the reasons why they considered the revised draft as better than the original one, and then they say:

" Consequently we decided to confine our deliberations to the revised draft of the Bill. "

The word " consequently " is important. Having seen the substantive provisions of the original Bill and the revised draft, it was natural and more appropriate to deliberate on the revised draft, which was nothing else than the substance of the original Bill in an improved form. The Select Committee further say:

" References are given in the margin to each section indicating the corresponding section in the original Bill. "

This is a further cogent proof that, though their deliberations were confined to the revised draft for finalising their conclusions, they had before them the view of each and every clause of the original Bill. This is made further very clear in the notes on clauses in which they deal with various parts and clauses of the Bill and state with reference to each part or clause the corresponding part or clause of the original Bill.

The joint minute of dissent of Dr. Bakshi Tek Chand and Pandit Balkrishna Sharma says, in passing at one place, that what the Select Committee considered was the revised draft and not the original Bill. This has to be interpreted in the light of what has been said above. The place where they make a mention of the revised draft being considered, the point of their contention is that the changes suggested by the revised draft were not merely changes of form, but related to matters of substance. It may be remembered that, in their detailed and able minute, they did not make any point that the original Bill was not considered by the Select Committee. Whether the changes suggested by the revised draft are good or otherwise, is the point they are making in their minute of dissent.

On the facts, therefore, as disclosed by records, I am clear that the Select Committee had given full and due consideration to the substantive provisions of the Bill that was referred to them, and the present motion of the Honourable the Law Minister is, therefore, competent, and in order.

Now, this being the decision on facts, what is the point of order of Mr. Kapoor?

An Honourable Member: We may adjourn now; it is past five O'clock.

Mr. Speaker: The house may now adjourn.

*The Assembly then adjourned till a Quarter to Eleven of the Clock on Friday the 18th February 1949.*

(11-45 A.M.)

HINDU CODE—*could*.

**Mr. Deputy Speaker:** We will proceed to the consideration of the Hindu Code.

**Shri Jaspat Roy Kapoor** (U. P. : General): May I raise a point of order ?

**The Honourable Dr. B. R. Ambedkar:** *rose*—

**Mr. Deputy Speaker:** A point of order has been raised by Mr. Kapoor.

**The Honourable Dr. B. R. Ambedkar** (Minister of Law) : I was going to refer just to that. Sir, the Order Paper contains sixteen different motions, some of them raise points of order and some of them are substantive motions. I was going to express myself on them before I actually spoke on my motion. However, if my friend has to say something, let him do so.

**Mr. Deputy Speaker:** Let us hear his point of order.

**Shri Jaspat Roy Kapoor** : Sir, on the previous occasion when the motion was being taken up I stood up to raise a point of order. I was then directed by the Honourable Speaker to wait until the point of order raised by my friend Mr. Naziruddin Ahmad had been disposed of. That point of order was disposed of that day exactly at 5 p.m. thereafter the House rose for the day. I hope you will be kind enough to allow me to raise that point of order now. But before I do so I want to assure the House that my object . . .

**Mr. Deputy Speaker:** The honourable Member will kindly state his point of order. There need be no apology or argument. I should like to hear the point of order.

**Shri Jaspat Roy Kapoor** : My point of order relates firstly to the rights and privileges of the members of this House and secondly to the competency of this House in the present Session to deal with such an important and controversial measure as the Hindu Code Bill when a large number of members of this House are not attending and cannot attend, not for personal reasons, or party reasons, but for reasons of state and in the interest of the country as a whole, being at present busy in the provincial legislatures with the budget sessions, although they are very anxious and eager to attend this House and participate in the discussion of this motion materially affects the whole Hindu society.

**Honourable Members:** This is no point of order at all.

**Mr. Deputy Speaker:** I am here to decide whether it is a point

of order or not. You will kindly bear with me. I expect he will conclude his sentence soon.

**Shri Jaspal Roy Kapoor:** I know many of my friends here are very impatient to proceed with the Bill. It was therefore, Sir, that I at the outset wanted to assure the House that my object is not to sabotage the Bill with many provisions of which I am in agreement. My object is that things should be done constitutionally, the right thing should be done at the right time and in the right manner. As you are aware ....

**Mr. Deputy Speaker:** I have heard the point of order. The honourable Member feels that this House is not competent to proceed with this Bill. This is number one. Number two is that certain members, whom he would like to have in this House, are not here. Neither is a point of order against the motion for consideration being taken up. This is a sovereign Legislative Assembly fit to pass any legislation it likes, I have heard the point of order and do not want to hear any more arguments in favour of it. As regards the absence of some members, it is no doubt true that a number of members could not be here both from the Provinces and the States. But it is always open to them to come here and take part.

**Babu Ramnarayan Singh (Bihar: General):** May I say, ....

**Mr. Deputy Speaker:** So far as the Chair is concerned and so far as this House is concerned, no such direction has been given and therefore the House is competent to proceed with its business. Honourable Members can come in at any time and take part in the debate. I rule out this point of order.

**Babu Ramnarayan Singh:** With all respect to you . . .

**Honourable Members:** Order, order.

**Mr. Deputy Speaker:** I would not hear anything more.

**Babu Ramnarayan Singh:** The previous ruling given by your. ....

**Mr. Deputy Speaker :** I have considered all the previous rulings. I have got them here.

**Shri V. S. Sarwate (Madhya Bharat):** I wish also to raise one point of order.

**Mr. Deputy Speaker:** Is it any point of order ?

Shri V. S. Sarwate: Yes.

**Mr. Deputy Speaker :** The Honourable Member will kindly briefly state the point of order.

**Shri V. S. Sarwate:** I shall be very brief. My point of order is this : That for the purposes of this Bill the provisions regarding publication

have not been satisfied. It is due to the Chair to see that those provisions are observed. I refer to rule No. 20 which says : " As soon as may be after a Bill has been introduced, the Bill, unless it has already been published, shall be published in the *Gazette*. " There is also a provision that a report of a Select Committee has to be published with the amended Bill. My submission in this case is this : that the Bill was published originally sometime in April 1947 before the Independence day. The political set-up of India has since changed and changed for the better. What I wanted to draw your attention to is this : That the Indian States which were not a part of the then British India were not to be affected by this Bill. Subsequently some States have merged and some have acceded to the Union in all subjects in August 1948. This is subsequent to the publication. There has been a Covenant of these States as the Chair may know sometime in August 1948. "The result of that Covenant is that the States would now be automatically governed by any legislation which the Centre passes either in its powers of exclusive jurisdiction or concurrent jurisdiction. I therefore submit that it is the duty of the Chair to protect and guard the rights of the people of these States concerned who are affected by any Bill. I submit that the object of this is two-fold. Such provision enjoining publication enables the constituencies or the people affected by any Bill to express their reactions, their opinions and their feelings about it. I believe this is a fundamental principle of democracy that no Bill shall be passed unless the people affected thereby are given an opportunity to express their opinion thereon. Secondly, the object of this publication is that the members of this Assembly may have an opportunity to ascertain what their constituencies feel about it. I need not say that it is the duty of the members here not to represent their individual views. They have to represent the views of their constituencies when important matters are concerned. As far as details or minor matters are concerned they may have discretion to express their views. But when a measure affects the whole life, the whole structure of society, then in such causes, in such vital matters it is the duty of the members to ascertain the views of their constituencies and represent them here correctly. They should not state what they feel. They should state what their constituencies feel. For this purpose, it is necessary that the Bill should be published. I submit that the Bill was published in the *Gazette*, but it was not published at the time when the people of the acceding States and merged States were in a position to give that serious consideration to this Bill, which this Bill deserves.



Therefore I submit it was not a proper publication, as far as those people are concerned and now, since the Chair is here to guard their interests, I appeal to the -Chair to order that the Bill be published before it is taken up for consideration.

**The Honourable Dr. B. R. Ambedkar:** My reply to the point of order raised by my honourable friend is two-fold. In the First place, there is never any obligation cast upon this House for circulating any Bill for publication before the House can take the matter into consideration. It is only in special cases, when the House by a Resolution or the Government by any executive action desire that the Bill is so important that public opinion might be invited; that public opinion is invited. There is no such right, no obligation at all on the Legislature or on the Government and therefore, from that point of view the point of order is no point of order at all.

My second submission with regard to the point of order is this, that we have deliberately confined the operation of this Bill to the provinces of India, and so far as the Provinces are concerned, the opinion has been canvassed three times, and I do not think any more purpose would be served by canvassing public opinion for the fourth time. When the occasion comes for the extension of the Bill to the Indian States, no doubt, this Legislature when a proper motion is placed before it, or the Government of the day, will take care that the wishes and the intentions of the States which have come into the Indian Union, will be consulted.

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**Mr. Deputy Speaker :** I agree with the Honourable Law Minister that inasmuch as the scope of this Bill is confined in the first instance only to Provinces of India and it is highly problematical whether it will be extended to the acceding States and if so, on what terms and conditions of accession, it will be time for them to consider whether they can come in or not. As regards the other one, it is not obligatory to send the Bill for circulation unless by a motion accepted by the House. The Select Committee has considered this matter

and has found this has not been so materially altered as to necessitate a republication in the Official Gazette. For these reasons I rule out the point of order.

**The Honourable Dr. B. R. Ambedkar :** Sir, before I proceed to speak on my motion, I think it would be desirable if I .....

**Shri B. Das** (Orissa: General) : There is obstruction everywhere. Everybody rises to a point of order. Mr. Naziruddin Ahmad rose six months; ago.

**Mr. Naziruddin Ahmad** (West Bengal : Muslim) : It is a different point of order. My honourable friends should have a little patience.

**Mr. Deputy Speaker:** I can only state that honourable members will kindly consider well before they raise a point of order. I also expect they will consider that if it should turn out to be a dialatory motion, they will invoke upon themselves the criticism of the House.

**Mr. Naziruddin Ahmad:** My point of order is not dialatory.

**Mr. Deputy Speaker:** It is open to any honourable member to raise a point of order. An honourable member can take as many points of order as are reasonable and proper.

**Mr. Naziruddin Ahmad:** The objection to the point of order is dilatory. My point of order is this : the honourable Minister for Law has already spoken on this motion. He completed the first part of .the motion and then the subsequent stages began. He has a right to reply at the end of the debate. Now the motion has been made that the Bill be taken into consideration and a speech has been delivered on the 31st of August, 1948. We have on the agenda a list of amendments. We have to proceed straight to the agenda and then when a motion is made the Honourable Minister certainly has a right of reply, and in the end a general right of reply. At this stage, the Honourable Minister can not make a second speech on the motion.

**Mr. Deputy Speaker:** I find from the proceedings on the 31<sup>st</sup> of August, 1948 the following :—

" *The Honourable Dr. B. R. Ambedkar* (Minister for Law): Sir, I move: " That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration. "

*Mr. Naziruddin Ahmad* (West Bengal: Muslim): Sir, on a point of order.

Mr. Speaker : I shall hear the Honourable Minister first and then take the point of order.

**The Honourable Dr. B. R. Ambedkar:** Sir, in view of the urgency of other Government business which is on the agenda and to which Government feels it must give precedence, I do not propose to make a speech in support of my motion, because it is quite obvious that if I were to make a speech in support of my motion, that is bound to give

rise to a debate which will result in the consumption of a great deal of the time of the Government. We have already few days left before the House is due to rise, and I, therefore, request you to allow this motion to stand over for further consideration in the next session of the Assembly. "

In view of this, the Honourable Dr. Ambedkar is entitled to proceed. I am exceedingly sorry that this point of order has been raised. It is only a dilatory motion.

**The Honourable Dr. B. R. Ambedkar:** As I was going to say, it would facilitate my work a great deal if I were to know from you what procedure you propose to adopt with regard to the 16 motions that have been tabled as against the motion which I have made, and about which I propose to speak during the subsequent period. These 16 motions fall into three different categories. There are certain motions which propose that the Bill be further circulated for eliciting public opinion. There are certain motions which propose that the Bill be referred to a Select Committee, which is different from the Select Committee which already reported on the Bill. And there are motions which propose that the Bill may be re-committed to the same Select Committee which has already reported.

There was one other or rather two other motions, one standing in the name of my honourable friend, Shri Prabhu Dayal Himatsingka and the other standing in the name of my honourable friend, Shri Biswanath Das, which propose that the Bill should be circulated to people residing in the acceding States, before the Bill could be taken into consideration. With regard to these two motions, a point of order was raised recently by my honourable friend, Shri V. S. Sarwate, which you have been good enough to dispose of and I therefore take it that motions Nos. 7 and 8 must be taken to have been deleted from the agenda of today. The other motions remain and I want to know whether it is your desire that these motions may be put simultaneously along with my motion, so that all of them may be debated together and ultimately each motion may be put to the House separately, or whether you propose to have these motions taken up before my motion, so that they may be disposed of and the ground may be cleared for my speech on the motion, which I have tabled.

I might say one or two points with regard to the motions that have been made. There are certain motions which you are bound to put, I agree, unless the movers of these motions by themselves voluntarily

desire not to move these motions. There are certain motions which are within your discretion, and unless you are satisfied that these motions are not dilatory motions but have behind them certain points of substance, it would not be open in accordance with the rulings which have been given by previous speakers, who have dealt with these questions, to put these motions to the House, Because the Chair must be satisfied that they are motions behind which stand substantial grounds and they are not purely dialtory. For instance, the motion that, the Bill should not be taken into consideration now, but should be taken into consideration at some later stage is one of those motions, I submit, which according to the rulings of the Chair heretofore could fall within your discretion, where you are satisfied that the reasons advanced by my honourable friends are subststantial reasons, and therefore, you should put the motion to the House. For instance, the motion for recommittal is one such motion, because if you will kindly refer to these two volumes of Rulings,—1 am sure you have .....

**Mr. Deputy Speaker:** What I propose to do is this.

**The Honourable Dr. B. R. Ambedkar :** I should like to have your guidance in this matter.

**Mr. Deputy Sopeaker:** I have considered this matter and the number of motions that have been tabled. So far as motions 1 and 2 are concerned, motion 1 is that the Bill as amended by the Select Committee be withdrawn.

**Pandit Thakur Das Bhargava (East Punjab : General) :** I do not propopse to move it at this stage: not that I am not entitled to move it.

**Mr. Deputy Speaker:** Then it is not necessary to go into the question whether it is in order out of order. The second motion is .....

**Pandit Thakur Das Bhargava :** I am not moving it at this stage.

**Mr. Deputy Speaker:** Then there is the amendment by Master Nand Lal that the consideration of the Bill be postponed to the Budget Session of 1951.

**Master Nand Lal (East Punjab : General):** I am not moving it.

**Mr. Deputy Speaker:** These three withdrawals clear the ground. By whatever name they may be called, these three motions, substantially are for adjournment of the debate. I thought that, before the Honourable Law Minister, the mover of the Bill proceeds the movers of these motions must have risen in their seats and pressed for the taking up of these motions, because, before their motions are disposed of, the honourable mover could not be allowed to speak.

Inasmuch as they were not moved, I kept quiet. Now it is clear they are withdrawn. The other motions *viz.*, those for re-circulation or for reference to Select Committee, whatever their nature might be, they are motions which under the Rules any person is competent to make. It is a question for the House to deal with them. So far as the Select Committee motions are concerned, I must be satisfied in the first instance, about their need. Apart from that, there is a motion for recirculation with respect to which some such requirements have not been laid down, so far as I can see in any rule or rulings. Therefore, I propose at this stage to allow the mover of the Bill to make his speech and after he concludes his speech, allow the motions for Select Committee and Circulation to be moved without any speech. Then, the discussion will go on on all the motions and I will put them one after another to the House.

**The Honourable Dr. B. R. Ambedkar :** I am obliged for your guidance. Sir. As usual when presenting a motion for the consideration of a Bill as reported by the Select Committee it is the duty of the Chairman of the Select Committee, in the first instance, to draw the attention of the house to such changes as may have been made by the Select Committee in the original Bill which has been referred to the Select Committee. I propose to follow that procedure in the first instance.

Sir, the first part of the Bill deals with marriage and divorce. So far as this part of the Bill is concerned, the Select Committee has added two clauses which relate to the restitution of conjugal rights and to judicial separation. These provisions specifically absent from the original Bill. The draftsmen of the original Bill felt themselves content by reference to the Indian Divorce Act of 1869 which contains provisions relating to the restitution of conjugal rights and judicial separation. The original draftsmen of the Bill felt that a reference in this Bill to the Indian Divorce Act would be quite sufficient to invoke these two provisions which were contained in the Indian Divorce Act and consequently it was not necessary expressly to mention these two matters in the Code. The select Committee felt otherwise. The select Committee felt that as this was going to be a complete Code of Hindu Law, it was wrong to leave the code incomplete, and so to say, legislate by reference. They therefore thought that, instead of leaving this matter to be invoked by reference to the Indian Divorce Act, it would be desirable to embody in the Code itself the provisions contained in the Indian Divorce Act relating to these matters and

consequently the part dealing with marriage and divorce has been expanded by the Select Committee by the addition of the clauses relating to these two matters. The House will see that there is no change as a matter of fact between the original Bill and the Bill as drafted by the Select Committee. All that is done is that what was done by reference to the Indian Divorce Act has been done expressly and positively by the inclusion in the Code of specific sections relating to these matters.

With regard to adoption, the Select Committee has introduced a few new changes. The first change that they have made is that when a father is disqualified by reason of the fact that he had changed his religion and ceased to be a Hindu, the mother has been given the right to give a boy in adoption. In other words, change of religion by the father from Hinduism to some other religion has been introduced as disqualification in the matter of the right to give in adoption. Consequently, a mother in those circumstances has been empowered to give a boy in adoption. Similarly, if a widow was there and there was a boy, that boy certainly could be given in adoption by the mother when the father was not living. There again, a disability has been introduced to the effect that if the widow ceased to be a Hindu, she would lose her right of giving the boy in adoption, which she would otherwise have.

Another change which has been made by the Select Committee is with regard to the different modes of taking a boy in adoption. Hitherto, as the House knows, there are various forms of adoption. The main form of adoption which is recognised by the Smritis is what is known as the Dattaka form of adoption. In addition to the Dattaka form of adoption, there have prevailed in the various parts of India, customary forms of adoption such as Godha Adoption, Kritrima Adoption, Dwyamushyayana Adoption. The Select Committee felt that as they were codifying the law, it is desirable not to allow any room for customs to grow, because the effect of customs being permitted would *be* to eat into the Code and make the Code after certain time *null and void*. Therefore, the Select Committee decided that if anybody wants to adopt under this Code, nobody can make any adoption except in accordance with the provisions of this Code, and Dattaka shall be the only form and no other.

Then, Sir, we come to the question of the right of the adopted boy to divest the persons in whom property has been invested before the adoption takes place. As every member of this House, who is aware of

the provisions of the Hindu Law, will know, under the existing Hindu law, it is permissible to a boy who has been adopted, no matter at what stage he has been adopted—he may have been adopted forty years after the death of the father—time makes no change at all in his rights—to file a suit to set aside any alienation or transfer of property made by the widow who has adopted him. Any amount of litigation goes on on this particular point. In fact, if anyone were to examine the total amount of litigation among the Hindus on the various points of Hindu law, I am sure they will find that litigation on the question of divesting the property by the adopted boy would be the largest volume. It is therefore desirable that this matter should be settled once and for all. The Rau committee adopted the procedure of dividing adoption into two categories—adoption made three years before the death of the father and the coming into operation of the Code: and adoption made after the Code. They laid down that a boy, if he was adopted three years before the death of the adoptive father would be entitled to the original rights which an adopted son had under the Hindu Code. But if he were adopted three years after he would not be entitled to set aside alienation.

The second thing that happened as a result of adoption under the Hindu Law was that he completely divested the widowed mother who made the adoption, with the result that the entire corpus of the property passed into the hands of the adopted boy, who, in a certain sense was a stranger, and notwithstanding the notional change that he entered into the family of the adopted father, he practically continued his affiliations with the members of the natural family. The result was that after the adoption had taken place, instead of the adopting mother getting any kind of security for herself as a result of adoption which a natural mother would get from a natural son, she found that this new adopted boy ran away with the property and left the mother with nothing but the right of maintenance. We thought that that was not a desirable state of affairs from the point of view of giving security to women, and consequently certain changes were made. The original distinction that was adopted in the Rau Committee was deleted and a provision was made that the rights of the adopted son shall accrue to him not from the date of the death of his adopting father but shall accrue to him from the date of his adoption, so that any alienation that may have been made prior to his adoption were beyond his reach, were unchallengeable by him.

The second provision that we have made was that the adopted son

shall not as a result of adoption deprive the adopting mother completely of her right of property. What the Bill says in its altered form is that only one half of the property of the widow will go to the adopted son. The other half, notwithstanding the fact that the widow has adopted will continue to be in the possession and enjoyment of the adopting mother. The result is that the Committee has permitted adoption which the Hindu community feels is a necessary thing for the purpose of perpetuating the family. But at the same time we have taken care to see that the adoption does not beggar the mother altogether.

**Mr. Deputy Speaker :** Is not that the result under the Deshmukh Act?

**The Honourable Dr. B. R. Ambedkar:** No. As I say, she gets only the maintenance.

**Mr. Deputy Speaker:** She gets half the share of the property.

**The Honourable Dr. B. R. Ambedkar :** As soon as the adoption takes place all that passes to the son.

**Shri Prabhu Dayal Himatsingka** (West Bengal : General) : According to the 1937 Act she is a co-heir with the son.

**Shri L. Krishnaswami Bharathi** (Madras : General): The son comes later on.

**The Honourable Dr. B. R. Ambedkar :** That may be so. Now I am coming to minority and guardianship. Here there are only two changes made by the Select Committee in this part of the Bill. The first change is that the power of the Hindu father as a natural guardian of his minor son has been taken away if he renounces the world or ceases to be a Hindu. The original law was that the father was the natural guardian and no matter what change took place in his condition either by his religion or in any other way, he still continued to be the guardian of his minor son. The Committee felt that as this was a Code intended to consolidate the Hindu society and their laws, it was desirable to impose this condition, namely., that the father shall continue to be the natural guardian so long as he continues to be a Hindu. The Code in its altered form also has introduced another change, namely, that a Hindu widow has been given power to appoint a testamentary guardian if her husband has not appointed anyone. She had not any such power and this power has been given to her by the Select Committee.

Now, Sir, I come to the part of the Bill which deals with succession and I will first refer to changes made in the succession to males. Now so far as what are called the compact series of heirs under the Hindu



Law, which are placed in category I by the Rau Committee is concerned, the Select Committee has made no alteration at all. The compact series remains as it is, both in the line of heirs as well as in the order of heirs. That matter has not been altered at all. But with regard to persons which are included in clauses 1 to 4 of the Rau Committee, certain changes have been made both in the matter of the line of succession and also in the matter of priority of succession. The Committee has followed both the principles, namely, propinquity as well as natural love and affection, and it is on that basis that the Select Committee has made certain alterations in the heirs set out in clauses 1 to 4 of the original Bill. The select Committee has also done one thing more : it has curtailed the number of degrees of agnates and cognates who can become heirs to the deceased, and also it has removed the other heirs, such as for instance, heirs which are not related, such as Sam Brahmchari Guru and so on. The reason why the Select Committee has curtailed the number of heirs as provided for in the original Bill is this. We are under this code giving the right to make a will to every Hindu. A line of criticism has been levelled in a very important journal, namely, the journal of Comparative Legislation, in which a very eminent lawyer has made the point that when you give the right to make a will, it is unnecessary to provide such a long list of heirs which extend to the fourteenth degree from the deceased. If the deceased is interested in a man which is related to him in the fourteenth degree and is alive at the time of his death, it is open to him to make a will and to give a part of his property to the particular person in whom he is interested.

If the deceased himself during his lifetime has not chosen to remember a relation who is related to him by the 14th degree there is no particular reason why because of mere intestacy he should be permitted to come in for a share. That is one of the reasons why the Select Committee adopted this provision.

I might also draw the attention of the House to the fact that with regard to widows a disqualification has been introduced by the Select Committee which says that a widow on remarriage shall lose her right of inheritance.

Then with regard to the daughter's share, which of course existed in the original Bill itself, the Select Committee has made a somewhat important alteration. The original Bill said that the daughter shall get a share equal to half the share of the son and in order to make equity equitable in devising the line of succession to the Stridhan property of

the woman they had also provided that in that case the son will take one half of what the daughter takes, so that the daughter will take one half in the father's and the son will take one half in the mother's property. I cannot say that that was an inequitable proposition but somehow the Select Committee and I believe I can say against the best part of their judgement increased in their enthusiasm the share of the daughter in father's property from one half to one full share, equal to that of the son. (*An honourable Member* : " The son is also given. ") I am aware of that. With regard to succession to females there are only two changes which the Select Committee has made. Under the existing rule the husband of a woman in the case of succession to females comes much later under the Hindu law and that provision was included by the old Rau Committee. The Select Committee felt that that was rather unjust, because it may be (it is often possible) that much of the property which is called Stridhan property or property which comes into the hands of a woman may, and perhaps does, to a very large extent come from the husband and if the husband is the principal source of the property, that comes into the hands of the woman, it is not proper that it should be postponed to other heirs. Consequently the Select Committee altered the provision and brought the husband in line with the other Stridhan heirs, so that the husband now shares simultaneously with the heirs of a woman, who share in the Stridhan property. As I said that because that increased the share of the daughter in the father's, they also *pari passu* made the share of the son in the mother's Stridhan property equal to that of the daughter.

**Mr. Deputy Speaker:** They balanced the son and daughter.

**The Honourable Dr. B. R. Ambedkar :** No change has been made in the law relating to maintenance which is worthy of requiring any mention to this House.

Then I come to the question of the joint family. It has been said that the provisions contained in the Bill as it has emerged from the Select Committee contained provisions relating to joint family which are absolutely new. I would like to take this occasion to repudiate that suggestion. No change has been done by the Select Committee. The provisions of the Mitakshara joint family were originally contained in the Bill as drafted by the Rau Committee and it was placed before this House on the 9th August, which the House accepted and sent to the Select Committee. (*Honourable Members* : 9th April.) Therefore my first submission is that no new change has been made by this Select Committee. All that the Select Committee has done is to add two new

clauses—clause No. 88 and clause No. 89. Clause 88 deals with the doctrine of what is called pious obligations. Clause 89 deals with the liability of the joint family to pay joint family debts. It was unnecessary to include these clauses, because once you break up coparcenary property it is not necessary to make any express provision with regard to the doctrine of pious obligation, because the doctrine of pious obligation is necessary where there is survivorship property : because by survivorship where A takes the property of B and the property of B is encumbered with debts, no special doctrine is necessary to impose an obligation upon B; because in hereditament which a person gets, he takes both the profit and the burden of it. But in view of the theory of the Mitakshara that every coparcener gets the property by survivorship, which does not belong to the deceased, the Patna high Court, if I may say so, as well as the Bombay High Court Bar pressed upon us very strongly that it was very desirable that these two things which were implicit, so to say, in the Mitakshara doctrine of joint family, shall be stated expressly in the Code, so that when the question of judicial interpretation arises there may be no occasion for any kind of dispute, doubt or controversy. As one of the objects of the code was to make the law clear not merely to the lawyers but to the ordinary citizens and as it is a suggestion which came from such a weighty authority as the Patna High Court and the Bombay High Court Bar, we thought it desirable to introduce these two things, namely no obligation to pay debts on the original ground of pious obligation and the liability to pay primary debts which belong to the family. Besides that there has been no change at all. If my friends have some doubt still on the subject that we have made fundamental changes in regard to the joint family of the mitakshara, I would like to draw their attention to section 86 (Part v : Joint Family Property). Section 86 of the new Bill as it has emerged from the Select Committee is the same word for word, except for ordinary verbal changes, as part III-A section 2, on page 12 of the original Bill as drafted by the Rau Committee. Similarly section 87 which also deals with joint property is word for word the same as part III-A, section 2, page 12. Anybody who compares the two I am sure will accept the proposition which I have enunciated in this House that this is not an innovation by the Select Committee at all but they form part and parcel of the original Bill as drafted by the Rau Committee.

I should like to dispel any further doubt that may exist on this point by referring to the Rau Committee's Report (page 13). This is what the Rau Committee says (paragraph 51):

" Turning now to the contents of the Draft Code the main proposals on which differences of opinion have manifested themselves in varying degree are the following:

(1) the abolition of the right by birth and the principle of survivorship and the substitution of the *Dayabhaga* for *Mitakshra* in the *Mitakshra* Provinces;

(2) giving of half a share to the daughter;

(3) the conversion of the Hindu woman's limited estate into an absolute estate;

(4) the introduction of monogamy as a rule of law;

(5) the introduction of certain provisions for divorce."

I think Hon. Members will see that the Rau Committee in setting about its work made it perfectly known to everybody in this country that the Code that they had framed and which subsequently was embodied by them did contain the specific provision. I have no doubt about it that anybody who has read the volumes of evidence which have been collected by them previously by the joint Select Committee appointed by this House, by the Rau Committee and by this Government by an executive order—would find that there is no person either in this House or outside, who has paid any attention to this part of the Code, who will be under any wrong impression that the Rau Committee had decided or proposed that this co-parcenary should not be abolished. It is therefore not a new innovation of the Select Committee at all.

The Select Committee has made some changes with regard to the application of the Hindu Code. The Rau Committee's Bill contained a provision that the Bill should not extend to areas to which the Marumakkattayam and Aliyasanthanam laws apply. Somehow the Select Committee in its enthusiasm transgressed, if I may say so without any disrespect, the bounds of reasonableness and came to the conclusion that there ought to be no area which ought to be exempt from the operation of this Code. Consequently they deleted the provision.

**Mr. Deputy Speaker:** In the interests of uniformity.

**The Honourable Dr. B. R. Ambedkar :** I do not know whether it was done rightly or wrongly; that is a matter which the house will consider at a later stage.

**Pandit Mukut Bihari Lal Bhargava** (Ajmer-Merwara): May I ask whether the honourable speaker was dissenting from that view ?

**The Honourable Dr. B. R. Ambedkar:** I will dissent at a later stage perhaps. I have no empty mind but I have still an open mind.

Shri H. V. Kamath (C. P. and Berar: General) : Not a vacant mind !

**Pandit Thakur Das Bhargava:** On every question I hope.

**The Honourable Dr. B. R. Ambedkar :** Sir, in the ordinary course a speech of the sort which I have made is generally regarded not only appropriate but sufficient for the occasion. But it would be futile on my part to disguise the fact that there is a section—if not a large section, a section in the house—which feels a certain amount of compunction over certain parts of the Bill. Neither can I disguise from myself the fact that outside the House there are many people who are not only interested in the Bill but, if I may say so, very deeply concerned about it. I therefore think that it is only right, if you will permit me, to add a few general observations with regard to the points of controversy which I have noticed in several newspapers which I have been pursuing ever since the Bill has been on the anvil. I will take this matter also part by part and section by section. I will deal only with what I regard have been considered as points of controversy. Let me take marriage and divorce. Here I find that there are three points of controversy.—The first point of controversy is abolition of castes as a necessary requirement for a valid marriage; the second point of controversy is the prescription of monogamy; and the third point of controversy is permission for divorce.

I will take the first point of controversy, namely—abolition of caste restrictions. So far as this Bill is concerned, what it does is to arrive at a sort of compromise between the new and the old. The Bill says that if member of a Hindu community wants to follow the orthodox system which requires that a marriage shall not be valid unless the bride and bridegroom belong to the same *varna*, the same caste or the same sub-caste, there is nothing in this Code which can prevent him from giving effect to his wishes or giving effect to what he regards as his *dharma*. In the same way if one Hindu who is a reformist and who does not believe in *varna*, caste or sub-caste, chooses to marry a girl outside his *varna*, outside his caste, outside his subcaste, the law regards his marriage also as valid. So far as the marriage law is concerned there is therefore no kind of imposition at all. The *vydhikas*, the orthodox, are left free to do what they think is right according to their *dharma*. The reformers who do not follow *dharma* but who follow reason, who follow conscience, have also been left to follow their reason and their conscience.

**Shri Mahavir Tyagi** (U. P. : General) : Are they permitted to marry outside their religion also if their conscience directs them in that

manner ?

**The Honourable Dr. B. R. Ambedkar :** Well, we will have another Bill for that. I do not know whether my honourable friend Mr. Tyagi is unmarried. If he is I will hurry it up.

**Shri Mahavir Tyagi:** I want to make way for others.

**The Honourable Dr. B. R. Ambedkar :** Consequently, what will happen in Hindu society so far as marriage law is concerned if there will be a competition between the old and the new. And we hope that those who are following the new path will win subsequently. But, as I say, if they do not, we are quite content to allow two parallel systems of marriage to be operative in this country and anyone may make his choice. There is no violation of a *shastra*, no violation of a *smriti* at all.

With regard to monogamy it may be that it is a new innovation. But I must point out that I do think that any Member in this house will be able to point out having regard to customary law or having regard to our *shastras* that a Hindu husband had at all times an unfettered, unqualified right to polygamy. That was never the case. Even today, in certain parts of South India there are people who follow this, a section of the Nattukottai Chettiyars—the case has been reported in the Reports of the Privy Council itself, I am not depending on mere heresay evidence—but among the Nattukottai Chettiyars there is a custom that a husband cannot marry a second wife unless he obtains the consent of his wife. Secondly, when a consent is obtained, he must allot to her certain property which I think in the Tamil language is called *moppu*. That property becomes her absolute property so that if after her consent the husband marries and ill-treats her, she has a certain amount of economic competence in her own hands to lead an independent life. I cite that as an illustration to show that there has not been an unqualified right for polygamy.

A second illustration which I would like to give would be from the Arthashastra of Kautilya. I do not know how many Members of the House have perused that book, I suppose many of them have. If they have, they will realise that the right to marry a second wife has been considerably limited by Kautilya. In the first place, no man can marry for the first ten or twelve years because he must be satisfied that the woman is not capable of producing children. That was one limitation. The second limitation imposed by Kautilya on the right of second marriage was that the husband was to return to the woman all the *stridhan* that she had acquired at the time of marriage. It is only under these two conditions that Kautilya's Arthashastra permitted a Hindu

husband to marry a second time.

Thirdly, in our own country, in the legislation that has been passed in various Provinces, monogamy has been prescribed. For instance in the *marumakkathayam* and the *aliyasanthanum* law both of them prescribe monogamy as a rule of marital life. Similarly, with regard to the recent legislation that has been passed in Bombay or in Madras, similarly in Baroda, the law is the law of monogamy.

I hope the House will see from the instances I have given that we are not making any very radical or revolutionary change. We have precedent for what we are doing, both in the laws that have been passed by various States in India, also in the ancient *shastras* such as Kautilya's Arthashastra. If I may go further, we have got the precedent of the whole world which recognises monogamy as the most salutary principle so far as marital relations are concerned.

**Shri Deshbandhu Gupta** (Delhi) : What about the Mohammadan Law?

**The Honourable Dr. B. R. Ambedkar:** We shall come to Mohammadan law when we discuss the Mohammadan law.

Coming to the question of divorce, there again I should like to submit to the House that this is in no way an innovation. Everybody in this House knows that communities which are called *shudra* have customary divorce and what is the total of what we call *shudra* ? Nobody has ever probably made any calculation as to the total number of *shudras* who go to compose the Hindu society, but I have not the slightest doubt in my mind that the *shudras* form practically 90 per cent of the total population of the Hindus. What are called the ' Regenerated ' classes probably do not fill more than ten per cent of the total population of this country, and the question that I want to ask of honourable Members is this : are you going to have the law of the 90 per cent of the people as the general law of this country, or are you going to have the law of the 10 per cent of the people being imposed upon the 90 per cent ? That is a simple question which every Member must answer and can answer.

So far as the ' regenerated ' classes are concerned there was a time, if one refers for instance to the time when the Narada *smriti* or the Parashara *smriti* were written, when the *smritis* recognised that a woman can divorce her husband when he has abandoned her, when he died, when he has taken *parivriju*, and she was entitled to have a second husband. Consequently, it may be that at a later stage I shall read to you some extracts from your *shastras* to show. (An honourable

*member* : " Your *shastras* "). Yes, because I belong to the other caste.

I shall read the extracts to show that what has happened in this country is that somehow, unfortunately, unnoticed, unconsciously, custom has been Allowed to trample upon the text of the *shastras* which were all in favour of the right sort of marital relations. My submission, therefore, to the house is that so far as any new principles have been introduced in the law of marriage or divorce, whatever has been done is both just and reasonable and supported by precedent not only of our *shastras* but the experience of the world as a whole.

With regard to adoption, there are again three points of controversy. One point of controversy with regard to adoption is this, that like the old Hindu law we do not make similarity or identity of caste a requisite for a valid adoption. We follow the same rule that we have followed with regard to marriage. Here again, I may say that if a *Brahmin* wants to adopt a *Brahmin* boy, he is free to do so. If a *Kayasth* wants to adopt a *Kayasth* boy, he is free to do so. If a *Shudra* wants to adopt a boy of his own community he is free to do so. If a Brahmin is so enlightened as not to adopt a boy belonging to his own community but adopts a *Shudra*, he is also permitted to do so. There is therefore no kind of imposition.

**Seth Govind Das** (C. P. and Berar: General): Why do you consider such a Brahmin enlightened ?

**The Honourable Dr. B. R. Ambedkar**: Well, I do not know. From my point of view certainly he is enlightened; from your point of view he may be a very dark man, but that is a difference of opinion.

With regard to the question of the limitation on the right of an adopted son to challenge all alienations made by the widow before adoption, I do not think that there can be any controversy at all. There is no reason why we should continue the notion that a boy when adopted becomes the son of the adopted father right from the time when the adopted father died. This is a pure fiction. It has no value at all. It is not merely a fiction; it is a fiction which gives rise to tremendous litigation and tremendous difficulties. It is therefore right that the adoption should be simultaneous with the vesting of the property. I do not think any member of the House will think that this is a proposition which we ought not to accept at this stage. (*Shri B. Das*: "We all accept".)

Similarly, as I have stated, the limitation upon the right of a boy who is adopted to divest the mother completely and to make her nothing more than a dependant waiting for such maintenance as the adopted



boy may give, I do not think that there is any member of the House who will think that such a situation can be justified on any ground whatsoever. I think it is right that we preserve the right of adoption which the orthodox community cherishes so much, but. Sir, I do not understand why there should be adoption. Most of us who make adoptions have no name to be recorded in history. Personally, I myself certainly would not like my name to go down in history, because my record is probably very poor. I am an unusual member of the Hindu community. But there are many who have no records to go down and I do not understand why they should indulge in adopting a son—a stupid boy, uneducated, without any character—not knowing his possibilities and fastening him and fathering him upon a poor woman, whom he can deprive of every property that she possessed. Therefore, my submission is this, that if you do want to cherish your old notions with regard to adoption at any rate make this provision that the adopted boy does not altogether deprive the mother of the property which is her mainstay. I do not think that that limitation can be at all a point of controversy.

With regard to the question of the abolition of customary adoption, I would like to say two things. There is a general argument which the House will be able to appreciate. It is this. A Code is inconsistent with customary law. That is a fundamental proposition. If you allow a Code to remain and at the same time permit custom to grow and custom to plead against the Code, there is no purpose in having a Code at all, because a custom can always eat into the Code and make the Code *null and void*. With regard to this particular matter of customary adoption such as *Krithrim* adoption, *Godha* adoption and *Dwaimushayan* adoption, my submission is this, that these are really not adoption at all. As the Privy Council in one of its rulings has definitely stated, adoption is purely a religious affair. The getting of property by the adopted son is a secondary matter. He may get property, he may not get property, and even though he may not get property his adoption from a religious point of view may be valid. Therefore, my submission is this, that all these customary adoptions are nothing else but devices to keep property within the two families which enter into this bargain, and in my judgement, since we have passed the Constitution and included in the Directive Principles one article saying that the State should take steps not to allow property being concentrated in the hands of one or a few, such devices like the *Dwaimushayan* where two parties merely agree to share the property

and keep it with them ought not to be tolerated. Besides, there is no reason why parties who want to make a genuine adoption should not conform to the rules and regulations regarding the *Dattaka* adoption which is permitted by the law.

**Mr. Deputy Speaker:** It is now one o'clock. The honourable Minister may continue after Lunch.

*The Assembly then adjourned for Lunch till half Past Two of the Clock.*

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*The Assembly re-assembled after Lunch at Half Past Two of the Clock, Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.*

**The Honourable Dr. B. R. Ambedkar:** I want not to take up the points of controversy relating to the topic of co-parcenary law. The question is raised: Why does the Bill wish to seek to abolish the co-parcenary which is prescribed by what is called the Mitakshara law? Now, Sir, having applied my mind in the best way I can for the proper exposition of this subjects, I think this is a question which required to be considered from three different points of view. One is how large a volume of property is included within the ambit of what is called co-parcenary property. If the volume that is comprised within what is called co-parcenary property is a very large part of the property which a man in these days holds, then no doubt some serious attention will have to be paid to this question. Therefore, that is the first aspect of the question that one has to examine.

The second aspect that we have to consider with regard to the retention of what is called co-parcenary property is whether any coparcener had individually the right to alienate property. Thirdly, whether any coparcener has a right in himself to break up the coparcenary. Obviously, if the property included within the class of property called co-parcenary property is a small part of the property, different questions will arise. Similarly, if any co-parcener, under the present existing Hindu law, has already got the right to alienate his share in the property, then obviously, the question whether this law or this Bill is abrogating co-parcenary property would stand on a different footing. Similarly, if under the existing Hindu law a coparcener has an inherent right to break up a co-parcenary, then my submission is that

the question that this Bill breaks up the co-parcenary becomes very much less momentous than is thought of by most members of the House as well as people outside.

Let me therefore take the first question : What is the extent of the non-co-parcenary property which a co-parcener may hold, notwithstanding the fact that he is a member of the co-parcenary ? Now, my friends, who have paid attention to this subject and know what the position is under the Hindu law, will know that there is no disqualification upon a co-parcener to hold separate property while he continues to be a co-parcener. A co-parcener may have capacity to hold two different sorts of property—property which belongs to the co-parcenary and property which does not belong to the coparcenary, but belongs to himself and does not go, by what is called survivorship.

Let me give the House some idea of the extent and nature of the property which a co-parcener can hold, although he is a co-parcener. I have taken from the existing text books on the Hindu law, the following categories of property which a co-parcener can hold, notwithstanding the fact that he is a co-parcener. Firstly, property inherited by a hindu from a person other than his father, grand-father and great grand-father. If a Hindu gets property from a person who is not his father, grand-father or great grand-father, that property is in his hand and is separate property and does not belong to the coparcenary. Secondly, property inherited by him from his maternal grand father, thirdly gift of ancestral moveables made to him by his father and fourthly property granted by government to an individual who is a member of the co-parcenary becomes his personal property and not the property of the co-parcenary. Then fifthly we have ancestral property lost to the family and recovered without the aid of the family property. That also, although originally co-parcenary property, becomes his private property. Then sixthly, there is the income from separate property and purchases made from the income of such property. They are also private property. 7, share of a co-parcener by partition if he has not male issue. 8, property held by a sole surviving co-parcener when there is no widow with the power to adopt. 9, separate earning of a member of a joint family co-parcenary and 10, gains of learning. Such vast amount of property included in these 10 categories is today under the Mithakshara law the private property of a co-parcener. It does not become the property of the co-parcenary.

Let me illustrate this by one plain illustration. There are hundreds and hundreds of clerks in our Secretariat, some drawing small salaries,

some drawing huge salaries more than the salaries of the Members of the Cabinet—Rs. 4,000 (Honourable Members : " Clerks ? Are they clerks ? ") I mean officers. In a certain sense they are glorified clerks.

The point I want to put to the house is this : that such large income as gains of learning, which come up in individual cases to Rs. 4,000, if there was a joint family in the true sense of the word, ought to go to the joint family for the joint maintenance of that family. What happens ? Under the Gains of Learning Act passed only a few years ago, this very Assembly, not I mean the Members, passed a law that such gains of learning, which form, as I say, the principal part of the income of a joint family and which a member is enabled to earn by reason of the education that was given to him out of the family income, have now been made his personal and private income. My submission to the House is this : when so large a property, as I have mentioned, included in these ten different categories have already been made in modification of the original laws of Mitakshara private property, what is the balance of property that is left which can be said to comprise the co-parcenary property ? My submission is that really very, very small volume of property is left to comprise within what is called the co-parcenary. Let me take the other question. It is said that the co-parcenary—1 hope Members understand that coparcenary is something very narrow and very limited and it is not the same thing as a joint family, which is quite a different matter— system enables the Hindus to preserve the property, to retain it, that there can be no break-up, there can be no squandering of money so to say on the part of any member of the family. A question that I want to put to the House is this : Is it true under the existing law of the Mitakshara that this property cannot be alienated , cannot be squandered ? The answer is completely in the negative. Let me give you one or two illustrations. I am taking the case of the father. The father can alienate joint property for antecedent debt. All that the father has to do is to first of all create a debt, say one thousand or two thousand rupees on a personal promissory note. Subsequently, after six months he becomes entitled to sell the whole of the co-parcenary property, if that becomes necessary for the purpose of meeting that antecedent debt. Now, a submission that I want to make to the House is this : Does the lodgment of such enormous power in the hands of a father to sell the property for purely antecedent and personal debts ? I want the house to bear in mind that the Mitakshara law makes a distinction between the father and the manager so far as the alienation of property is

concerned. True a manager cannot alienate a property belonging to the co-parcenary unless and until it is proved that there is a family necessity for which alienation is necessary. But with regard to the father, there is no such obligation at all. A father can create a debt personally for himself and he becomes entitled to alienate that property for a purely personal debt which has not been incurred for the purposes of the family. The only limitation that is imposed upon the right of the alienation of the father under the Mitakshara law is that the debt must not be impious, must not be for an immoral purpose and if it is not immoral, then the father can alienate the whole of the property of the co-parcenary. There is no limit at all.

Similarly, take the case of the son. It is also under the Mitakshara law within the competence of a son to demand the partition of the family property at any time he likes. I could have well understood the argument for the conservation of the co-parcenary property if the rule of Hindu Law was that no co-parcener was entitled to alienate the property, that the property must remain the property of the coparcenary, but that is not the case. The root of dissolution, the root of destruction of the co-parcenary property is in the co-parcenary itself, because it is the co-parcenary law that gives a vested right, a right from the very birth to demand partition of the property and disrupt the whole of the society.

Thirdly, even if a son does not alienate his property, he can create a debt on the property for his own personal purposes and the creditor who has advanced that money under Mitakshara law has a perfect right to sue for the partition of the co-parcenary in order to recover his debt. A stranger, therefore, under the Mitakshara law has a right to break up the co-parcener. I would like to ask my honourable friends, who are worried about this matter, where a large part of the estate, of the assets lies outside the co-parcenary property and so far as the co-parcenary property is concerned, the father has a right to alienate without any kind of limitation except the immorality of the debt, the son has a right to break up the property at any time he likes and the son has a right to create a charge on the property enabling the creditor to sue for partition, is it something which might be called a solid system, which is fool-proof and knave-proof? My submission is this, that the co-parcenary property law as it stands, contains within itself the elements of disruption. Therefore, the Bill is doing nothing very radical in saying that the share shall be held separately. As we all know to-day the condition is such that everybody wants to live separately. The

moment a father dies, the sons claim that there shall be a legal recognition to facts, as they exist to-day. There is nothing that is radical at all in this part of the Bill.

Of course, I should say one thing which I think is generally not realized. I started by saying that a distinction has to be made between co-parcenary and joint family. This Bill while it does away with coparcenary, maintains the joint family. It does not come in the way of the joint family being maintained. The only thing is that the joint family in the Mitakshara law will be on the same footing and of the same character as the joint family under the Dayabhaga law. It must not be supposed that because the mitakshara law does not prevail in Bengal that there is no joint family. There is a joint family. The only distinction will be that the members of the joint family instead of holding their rights as joint tenants, will hold them as tenants in common. That will be the only distinction that will be between the existing law in the Mitakshara and the 'future law in the Mitakshara.

Now, I come to woman's property. I do not know how many members of this house are familiar with the intricacies of this subject.

So far as I have been able to study this subject, I do not think that there is any subject in the Hindu Law which is so complicated, so intricate as the woman's property (An honourable Member : " As the woman herself ") : As the woman herself. If you ask the question, what is *stridhan*, before answering that question, you have to ask another question and find an answer for it. You must first of all ask, ' is she a maiden ' or ' is she a married woman '. Because what property is *stridhan* and what property is not *stridhan* depends upon the status of the woman. Certain property is *stridhanam* if she has obtained it while she is a maiden; certain property is not *stridhan* if she has obtained it after marriage. Consequently, if you ask the question what is the line of inheritance to the *stridhan*, you have again to ask the question whether the *stridhan* belongs to a maiden or the *stridhan* belongs to a married woman. Because, the line of succession to the *stridhan* of a maiden is quite different from the line of succession to the *stridhan* belonging to a married woman. When you come to the question of succession to married woman's property, you have again to ask the question, does she belong to the Bengal School or does she belong to the Mitakshara School. If you ask the question whether she belongs to the Mitakshara school, you will never be able to find a definite answer unless you probe further and ask whether she belongs to the Mithila School or the Benares School or some other School. This is a most complicated

subject. At the same time, I should like honourable members to bear two things in mind. One is this : so far as women's property is concerned., generally speaking, it falls into two categories. One category is called her *stridhan* and the other is called widow's property. The latter property is property which she inherits from a male member of her family, and according to the existing law property which she owns only during her life time and subsequently that property passes to the reversioners of the male heir. That is the position.

Therefore, so far as women's property is concerned, we have two different sorts of inheritance and two different sets of property, *stridhan* property and widow's property. The heirs to *stridhan* property are quite different and distinct from the heirs to the property she inherits from a male member. The question, therefore, we have to consider in codifying this particular branch of the Hindu Law is this. Are you going to maintain the two principal divisions which exist at present, namely., *stridhan* property and widow's property ? Secondly, are you going to maintain the double line of succession ; one line of succession for the *stridhan* property and another line of succession for widow's property ? These are the two principal questions which arise when one begin to codify this law. The Committee came to the conclusion that so far as codification was concerned, its purpose would be defeated if we allow the present chaos to continue. We must either decide that a woman will not be entitled to have absolute property or we must decide that a woman should have absolute property. We must also decide what should be the line of heirs for a woman: whether they should be uniform or they should be different. The Committee came to the conclusion that so far as right to property is concerned, there should be uniformity and uniformity should recognise that the woman has absolute property.

I know a great deal of the argument that is always urged against women getting absolute property. It is said that women are imbecile; it is said that they are always subject to the influence of all sorts of people and consequently, it would be very dangerous to leave women in the world subject to the influences of all sorts of wily men who may influence them in one way or another to dispose of property both to the detriment of themselves as well as to the detriment of the family from which they have inherited the family property. The view that, the Committee has taken is a very simple one. In certain matters or certain kinds of property which is called *stridhan* property the Smritis are prepared to invest woman with absolute right. There can be no

question at all that a woman has an absolute right over her *stridhan* property. She can dispose it of in any way she likes. My submission to the House is this. If the woman can be trusted to dispose of her *stridhanam* property in the best way she likes, and nobody has ever raised an argument for the obliteration of that rule of Mitakshara, the burden of proof lies upon the opponents who say that the other part of the property, namely, widow's estate, which the woman has inherited, should not become her absolute property. It is they who must prove that while the women are competent to dispose of a certain part of the property which they possess, they are not competent to dispose of a certain other part. The Committee, on a very careful examination, failed to find a satisfactory solution of this dilemma. The Committee, in my judgement, very rightly, came to the conclusion that if in certain cases women were competent and intelligent to sell and dispose of their property, they must be held to be competent in respect of the disposal of the other property also. That is the reason why the Committee have made this rule that women should now possess absolute property.

The other question that arises on this issue, namely women's property is the share of the daughter. I know it would be a very great under-statement to say that this is a ticklish question; it is a very anxious question. There are many people in this world, in India today, both orthodox and unorthodox who cannot help producing daughters; they do. I do not know what would happen to this world if daughters were not born. At the same time, they do not want to extend to the daughter the same love and affection which a parent is bound to extend both to the male and female issue. But, I am not going to use any such high level of argument in favour of the proposition which has been enunciated by the Select Committee; I am going to speak on a much lower tone. The first thing that I would like to address myself to this house is this. The inclusion of the daughter among the heirs is not an innovation which is made by this Committee. Honourable members who are familiar with the law of inheritance as it prevails both under the Mitakshara and Dayabagha, I am sure, will admit that the daughter is included by both of them under what is called the compact series. As members will know, Hindu heirs are divided into several categories. The first category, is called, compact series. After that, there is a series of heirs spoken of as *Sapindas*, then comes *samanoduks*. After that comes the *bandhus*. *Bandhus* are divided into three categories: *Atma bandhus*, Pitru *bandhus* and Matru *bandhus*. The compact series is



really a special class of heirs which does not conform strictly to the basic principles of heirship surrounded round *gotraja*, *samanodaka* and *bandhus*, because it is a mixed category. It is a category which is based on double foundation. It is based on propinquity; it is also based on religious efficacy. They do not conform to any of the criteria which have been laid down for determining the categories of *sapindas*, *samanotlakas* and *bandhus*.

3 P.M.

If you take both the laws, the Mitakshara as well as the Dayabhaga, you will see that the daughter is included within the category known as compact series. The only distinction between the Mitakshara and the Dayabhaga is this. According to the Dayabhaga the necessary element in heirship is the capacity to offer oblation. Consequently the Dayabhaga makes a rule between a daughter who is unmarried, a daughter who is married, a daughter who is married but has a son, and a daughter who is a widow. They give preference to a daughter who is married and has a son. Next to that they give preference to a daughter who is married. The unmarried daughter comes third. But it is within that category, the reason being that a daughter who is married and has a son, is ready there to offer oblation, because her son can offer oblation. A daughter who is unmarried, has no son, and therefore his possibility of offering an oblation does not exist. That is why she has been kept down. But the point I want to emphasize, and which I want the House to bear in mind is that there is no innovation as such in the inclusion of the daughter in the category of compact series. She has always been there both according to the Mitakshara and according to the Dayabhaga. The only innovation which the Bill seeks to make is to raise the status of the daughter. Under the Bill she becomes simultaneous heir, along with the son the widow, the widow of the predeceased son, son of a predeceased son of a predeceased son, widow of a predeceased son of a predeceased son.

The point is this that originally, and particularly according to the Mitakshara Law, no female was entitled to any kind of share at all. This law was changed in the year 1937 whereby the widow of the deceased, the widow of the predeceased son and of his grandson and great-grandson—they were all made simultaneous heirs along with the son. The only omission that was made was in respect of the daughter. The government at that time was not prepared to lend its support to put the daughter on the same level as the widow and the widows of the

predeceased son and the predeceased son's son. This is therefore the only innovation that the Bill makes. It merely raises it up in the order of heirs. It is not that for the first time she has been made an heir.

Now I come to the question of her share. As the Rau Committee has pointed out, and as many of the witnesses who know the Shastras have pointed out, that it is impossible to deny the fact that the daughter according to the Smritis was a simultaneous heir along with the son and that she was entitled to one-fourth share of her father's property. That has been accepted as a text from the Yagnavalkya and also from Manu. I once counted 137 Smritis and I do not know why our ancient Brahmins were so occupied in writing Smritis and why they did not spend their time doing something else it is impossible to say, assuming that that occupation was a paramount occupation of the day. There is no doubt that the two Smritikars whom I have mentioned—Yagnavalkya and Manu, rank the highest among the 137 who had tried their hands in framing Smritis. Both of them have stated that the daughter is entitled to one-fourth share. It is a pity that somehow for some reason custom has destroyed the efficacy of that text : otherwise, the daughter would have been, on the basis of our own Smritis, entitled to get one-fourth share. I am very sorry for the ruling which the Privy Council gave. It blocked the way for the improvement of our law. The Privy Council in an earlier case said that custom will override law, with the result that it became quite impossible to our Judiciary to examine our ancient codes and to find out what laws were laid down by our Rishis and by our Smritikars. I have not the least doubt about it that if the Privy Council had not given that decision, that custom will override text, some lawyer, some Judge would have found it quite possible to unearth this text of Yagnavalkya and Munusmriti, and women today would have been enjoying, if not more, at least one-fourth of the share of their property.

The original Bill had raised the share of the daughter to one-half. My Select Committee went a step further and made her share full and equal to that of the son.

I am not entitled to disclose what happened at the Select Committee and how this provision came to be made. I am perfectly.....

**Shrimati Renuka Ray** (West Bengal : General) : Unanimously !

**Mr. Deputy Speaker:** Was it a compromise between twice the share of a son claimed and half the share provided in the Bill ?

**The Honourable Dr. B. R. Ambedkar :** It was not a compromise.

My enemies combined with my enthusiastic supporters and my enemies thought that they might damn the Bill by making it appear worse than it was.

**Shri. H. V. Kamath:** Have you any enemies.

**The Honourable Dr. B. R. Ambedkar:** However, this is the position, namely, so far as the daughter's share is concerned, the only innovation that we are making is that her share is increased and that we bring her in the line with the son or the widow. That also, as I say, would not be an innovation if you accept my view that in doing this we are merely going back to the text of the Smritis which you all respect.

I might also say that in discussing this question about the share of the daughter, myself, and the members of the Law Department examined every system of inheritance. We examined the Muslim system of inheritance : We examined the Parsi system of inheritance : We examined also the Indian Succession Act and the line of succession that had been laid down and we also examined the British system of inheritance, and nowhere could we find any case where a daughter was excluded from a share. There is no system anywhere in the world where a daughter has been excluded.

Now, Sir one question has been brought forth constantly—that the giving of the share to the daughter means disruption of the family. I must frankly confess that I cannot appreciate the force of that argument. If a man has twelve sons and one daughter, and if the twelve sons on the day of the death of the father immediately decide on partition and obtain a twelfth of the total property of the father, is the partition going to be much more worse, if there was a daughter, the thirteenth, who also demanded a share ?

Twelve share or 12 fragments is not a better situation than 13 fragments. If you want to prevent fragmentation we shall have to do something else, not by the law of inheritance but by some other law, whereby property shall not be fragmented so as to become less useful from a national point of view for purposes of national production.

**Shri T. A. Ramalingam Chettiar** (madras : General) : Is the Hindu Code applied to agricultural land ?

**The Honourable Dr. B. R. Ambedkar:** It is not. I am saying generally.

I think I have, so far as I know, exhausted what I have to say on the various points of controversy which I had seen raised both by members of this House as well as by the members of the public. I hope that the clarification which I have given on the various points will allay

the fears of members who are not well disposed towards this measure. They will realise that this is in no sense a revolutionary measure. I say that this is not even a radical measure and I should like to draw the attention of the members of this House to one important fact, namely the constitution and composition of the Rau Committee. There were four members of that committee but I should like to point out that two of them who have signed the report are far from radical members of the Hindu community. My friend Mr. Gharpure, whom I have known for a long number of years, is one of the most conservative members I know

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**Shri H. V. Kamath:** Politically or Socially ?

**The Honourable Dr. B. R. Ambedkar:** Politically and socially also. In fact I have no hesitation in saying that he may on certain occasions find it very difficult to touch me even with a barge pole. He is so conservative. My friend Mr. T. R. Venkatarama Sastri is no doubt a liberal but he is certainly not a radical so far as I know. If these people conservative in their attitude have signed the report I think we can take it for granted that the measure to which they have put their signature could not be revolutionary and certainly could not be destructive of the foundations of the Hindu Society. So far as I am concerned I am a very conservative person : Although some people may not accept that fact. I am indeed very conservative. All I say is that I am a progressive conservative and I should like to tell the House one important fact which I think every one of us must bear in mind, particularly the conservative members of this House. The great political philosopher Edmund Burke who wrote a big book against the French revolution because of its radicalism and revolutionism did not forget to tell his own countrymen who were very conservative, one very important truth. He said that those who want to conserve must be ready to repair and all I am asking of this house is this : that if you want to maintain the Hindu system, the Hindu culture, the Hindu society, do not hesitate to repair where repair is necessary. This Bill asks for nothing more than repairing those parts of the Hindu system which are almost become dilapidated.

**Shri H. V. Kamath :** Sir, on a point of reminder, the Honourable Dr. Ambedkar promised some citations from the Smritis. Will he keep promise?

**The Honourable Dr. B. R. Ambedkar :** I shall do so at the end. Fortunately for me I have secured a copy of Mr. Dwarkanath Mitter's own book "Rights of Hindu Women". I was going to cite certain text,

which show that the rights which the Vedas had given to women were taken by the Smritis in the meantime and some other smritis tried to restore those rights. I shall cite them in the course of my speech.

**Shri Deshbandhu Gupta:** Could the Honourable Minister enlighten the House as to the evidence which was produced before the Select Committee?

**The Honourable Dr. B. R. Ambedkar :** As Honourable Members know two bodies came to us and asked for evidence to be taken. The Committee decided that their evidence be taken. One body came and one body sent in a written reply. That body was the Dharma Nirnaya Mandal. In general they are absolutely in agreement with the provisions contained in the Bill. The other gentleman who came obviously was not.

**Mr. Deputy Speaker :** Motion moved :

" That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration ".

Two amendments were not pressed. What about the next amendment ?

**Pandit Thakur Das Bhargava :** Sir, I am not in a position to move any of my amendments.

**Mr. Deputy Speaker :** As I have already stated in answer to the suggestion made by the Honourable the Mover of the Bill I shall allow those motions to be made without any speeches at the time of moving the motion. After all the amendments are moved whichever are relevant and are admitted, there will be discussion on them as also on the original motion.

**Shri Deshbandhu Gupta:** On a point of order. Sir, is it open to an honourable Member to say that he is not in a position to move his amendments?

**Mr. Deputy Speaker:** It is.

**Mr. Naziruddin Ahmad:** Sir, I am directed . . . .

**An Honourable Member:** By whom ?

**Mr. Naziruddin Ahmad :** I am directed to move my amendment without a speech at the first instance. (*An honourable Member: " Who has directed you ?"*) I am directed by the Honourable Deputy Speaker. I find that honourable members are extremely impatient.

**Shri R. K. Sidhva (C. P. and Berar: General) :** No, we are not. Proceed.

**Mr. Naziruddin Ahmad :** I have been directed, I repeat, to move my amendment without a speech. On account of the eloquence of my honourable friend the Law Minister I was already speechless .....

**Shri L. Krishnaswami Bharathi:** You are already disobeying your mandate.

**Mr. Naziruddin Ahmad:** There are the bright ladies who have also created a profound impression upon me and just before I stood up Pandit Thakur Das Bhargava, a very powerful member, said that he was not in a position to move.

**Mr. Deputy Speaker :** Is this preamble necessary for moving his amendment?

**Mr. Naziruddin Ahmad :** I was already rendered speechless and that is why I was expressing my gratitude for suggesting that I should not make any speech.

**Mr. Deputy Speaker:** The honourable Member will speak later. Mr. Naziruddin Ahmad: Sir, I beg to move with considerable amount of nervousness:

" That the Bill be circulated for the purpose of obtaining further opinion thereon by the end of 1949. "

**Mr. Deputy Speaker:** Amendment moved:

" That the Bill be circulated for the purpose of obtaining further opinion thereon by the end of 1949."

**Shri B. Das:** Sir, as this is a dilatory motion I suggest it may be ruled out of order.

**Shri Mahavir Tyagi :** On a point of order; in the morning also there was some ruling about dilatory motions. I submit. Sir, that they are the privilege of a Member. Although I stand by Dr. Ambedkar in many respects with regard to this Bill, I submit that dilatory motions are the privilege of those Members who are not in power—of individual Members as well as parties. Let it not be tabooed. It is a democratic right of Members to delay business if they choose to do so. Therefore a motion should not be disallowed because it is considered to be dilatory. Dilatory motions are the privilege of a House of democracy.

**Mr. Deputy Speaker:** I do not see any point of order in what Mr. Tyagi has said. He wants full discussion to be allowed on this. As regards the point raised by Mr. B. Das I am not able to understand it. Does he mean to say that under any of the Rules such a motion is not allowable ? If so when Report is presented, the procedure is this. (*An honourable Member:* " What Rules are they ?") The rules that we adopted last session.

The Rule says:

" If the member in-charge moves that the Bill be taken into consideration, any member may move as an amendment that the Bill be re-committed or be circulated or re-circulated for the purpose of obtaining opinion or further opinion thereon. " Therefore under the Rules this kind of motion is allowed. I want to know how I am expected to disallow this motion.

**Shri B. Das :** I am aware of that Rule. But I was guided by the ruling of this morning that no dilatory motions would be allowed. I therefore raised the point of order.

**The Honourable Dr. B. R. Ambedkar:** May I be permitted to say something? I think the point raised by my friend Mr. B. Das is a perfectly correct point of order, because of this .....

**Honourable Members:** No.

**Pandit Thakur Das Bhargava:** When the Deputy Speaker has given a ruling it cannot be questioned.

**Mr. Deputy Speaker:** The honourable Members will not speak all together. They will rise in their seats and speak one at a time. Let me hear the Honourable the Law Member. I will allow an opportunity to every Member to speak on this point provided he is able to make a proper contribution to the debate. Nobody need be impatient.

**The Honourable Dr. B. R. Ambedkar:** Sir, as you will recall the motions which are permissible under the Rules of Business fall into two categories: One set of motions are such that the Speaker must put them to the House; the other set of motions are such that the Speaker must first be satisfied that they are proper motions before he can put them to the House. Let me illustrate this by reference to a motion for adjournment. Under the Rules every honourable Member is permitted to move an adjournment motion. But merely because a certain member has tabled an adjournment motion that in itself does not authorise, enable or empower the Speaker to put it to the House, because it is laid down that unless the motion is held to be admissible by the Speaker the motion shall not be put. I can give various other illustrations. With regard to a motion like this, namely, the adjournment of the consideration of the Bill and circulations for further opinion, my submission is that such a motion falls within that category of motions where the Speaker is required to be satisfied before he can put the motion to the House. It has been the universal practice in this House that any such motion for the postponement of the consideration of the Bill or for circulation, made after the Select Committee has made its

Report, is *prima fade* dilatory. Unless the member who makes the motion advances substantial reasons for such a motion and the Speaker is satisfied that the reasons advanced are substantial such a motion will not be admissible. There are many rulings in these books but I should like to draw attention to ruling No. 1 in book No. 1. In regard to this motion no substantial reasons have been given.

**An Honourable Member:** But he has not spoken at all. Mr. Deputy Speaker: Let the honourable the Law Member conclude.

**The Honourable Dr. B. R. Ambedkar :** I was only drawing your attention to a ruling (No. 1) in this book. There are various others also. It says:

" During the discussion on the Cotton Excise Duty Abolition Resolution a motion was moved to adjourn the debates on the Resolution. (*Which practically means sending it away for circulation or to leave it up.*)

"The President while accepting the motion on this particular occasion without creating a Precedent remarked :

" The Chair cannot allow a motion to adjourn consideration of a proposition to be moved merely in order to enable another item of business to come forward. It must be supported on substantial grounds. "

**Pandit Thakur Das Bhargava:** The ruling says it is not a precedent but you want to make a precedent of it.

**The Honourable Dr. B. R. Ambedkar:** The President says ' I am ruling but I am not creating a precedent.'

**Pandit Thakur Das Bhargava :** In this matter I would call your attention to page 81 of ' Decisions of the Chair ' which says that there are certain motions which can be stated to be of a dilatory nature. The question of circulation is not certainly one of such nature. But there are motions of a dilatory nature and it is in the discretion and power of the Chair to allow them or not to allow them. One page 81 of this book in regard to re-committal of motions it has been held that though to start with, it may be regarded as a dilatory motion, if something happened in the Select Committee or some events have transpired since, the Chair is perfectly authorised to say that it is not a dilatory motion. Now the honourable Member has not been asked what the reasons are and before that my honourable friend gets up and says that it is a dilatory motion. It is absolutely wrong for him to suggest at the very outset that it is a dilatory motion. A circulation motion is not a dilatory motion.



Unless the Speaker comes to the conclusion that nothing has transpired in the Select Committee or no further events have taken place which justify him to retard that motion I think the Speaker is not entitled to say that any of the motions are also dilatory. Ordinary motions countenanced by the rules cannot be regarded as dilatory motions.

**Mr. Naziruddin Ahmad:** Sir, I think matters can be cut short in a minute. The precedent relied upon by the Honourable the Minister of Law does not apply to this situation at all. The heading is, "Adjournment of Debate",....

**The Honourable Dr. B. R. Ambedkar:** This is an adjournment of debate, if the motion is carried.

**Mr. Naziruddin Ahmad:** No, it is entirely different as I shall show. The sub-heading is "Adjournment of Debate: Motion when allowed to be moved: ' '. I do not move for an adjournment of this debate, which certainly could be done under amendment No. 2,

that is:

" That the consideration of the Bill, as reported by the Select Committee be postponed. "

My object is continuance of the debate, consideration of the motion, and I want the consideration to be taken along with my motion. A further reading of the ruling relied upon by Dr. Ambedkar will make it absolutely clear:

" During the discussion on the Cotton excise Duty Abolition Resolution a motion was moved to adjourn the debate on the Resolution.

" The President while accepting the motion on this particular occasion without creating a precedent, remarked: The Chair cannot allow a motion to adjourn consideration of a proposition to be moved merely in order to enable another item of business to come forward. It must be supported on substantive grounds. "

As I understand it, there was at the time one motion before the House and there was another perhaps more interesting or more important in advance. A Member proposed the adjournment of the discussion of a resolution which was under consideration so that another more interesting Motion may be taken up. It was the attempt to adjourn the first Motion that was said to be unacceptable. Here I do not propose adjournment of the debate.

**The Honourable Dr. B. R. Ambedkar:** It all comes to that.

**Mr. Naziruddin Ahmad:** Here we are concerned with the

interpretation of Rule 52. The plain reading of this rule would show that the motion is in order. Without abrogating the rule it cannot be held that it is out of order.

**Pandit Hirday Nath Kunzru** (U. P. : General): This Bill admittedly has created a great deal of feeling and it would be most undesirable to add to it by restraining the discussion in any way. I think the only way of making every section of the House feel that full opportunity was being given to it to express its opinion on this and to allow the discussion. Whatever our individual views regarding the merits of the Bill before us may be, that should be no ground for opposing the Motion of my honourable friend Mr. Naziruddin Ahmad.

Dr. Ambedkar quoted a ruling of the Chair in regard to a matter that is not on all fours with that under consideration now. In the first place the ruling was given in regard to a Resolution and not in regard to a Bill. In the second place, the rules lay down clearly that so far as a Bill is concerned a Motion may be made not merely that the Bill be circulated but that it may be recirculated, not merely that it should be referred to a Select Committee but that it should be recommitted to it. The language is therefore absolutely clear. If, whenever a Motion is made for the re-committal or re-circulation of a Bill, it is opposed on the ground that it is a dilatory Motion, the clear rights, the rights most unequivocally given to Members by the Rules will be completely *null and void*. We may feel impatient that a Motion like that of Mr. Naziruddin Ahmad may be ruled out. We may be ready to turn it down, but that is no reason for not allowing it to be moved. In my humble opinion, it is most assuredly in order and we shall be doing a great injustice if in order to pass a law in which we are keenly interested we whittle down the rights of Members and try to interpret the Rules in a manner convenient to whatever may happen to be the majority at any particular time.

**Shri L. Krishnaswami Bharathi** : Sir, the only point is that under Rule 52(2) no doubt every Member has a right, but the important point is that it is subject to admissibility which is at the discretion of the Speaker. All that Dr. Ambedkar said was, that we have no doubt the right to ask interpellations, but that certainly does not mean that all interpellations should be put on the Agenda Paper; it is subject to admissibility. There being the discretion, all that you have got to decide now is, whether it is in the nature of a dilatory Motion. You may ask Mr. Naziruddin Ahmad to give his reasons. If you are satisfied that he has a good ground to move his Motion, then you have got the discretion to

allow him to move it. Therefore, it is now for you, Sir, to ask him and be satisfied; and if you are satisfied that he has valid grounds, certainly he can move the motion. That is a point which Dr. Ambedkar raised. Every Member is entitled to speak and take his chance. All that you are concerned with, is a matter of procedure; the procedure being that a Motion is subject to admissibility, which is within your discretion. I may suggest that you may ask Mr. Naziruddin Ahmad to give his grounds and it is ultimately for you to decide whether it is in the nature of a dilatory motion, in which case you have to rule it out of order; but if you are satisfied about the grounds then, you may allow the motion to be moved.

**Mr. Tajamul Hussain** *rose—*

**Babu Ramnarayan Singh** : Sir, I have something important to say.

**Mr. Deputy Speaker**: On the point of order ?

**Babu Ramnarayan Singh**: Yes, Sir.

**Mr. Deputy Speaker**: All right.

**Mr. Tajamul Husain** (Bihar : Muslim) : Sir, I caught your eye first. I have also got a point of order.

**Mr. Deputy Speaker** : After this point of order is disposed of Mr. Tajamul Husain's point of order will be considered.

**Babu Ramnarayan Singh** : Sir, you have already quoted the rule. I am sure no ruling can be given by any President against a Rule. The thing is this : there may be a subject under discussion in the House on which opinions may be divided—it is quite natural. One section of the people may look upon the subject as a boon, and the other section may look upon the subject as a danger, as a plague, as a curse. That section of the people who look upon the subject as a curse has the right not only to delay the Motion, but even to kill it. Here also, I think this section has the right to move the Motion and I think justice demands that they may have all the privileges and all the rights.

**Mr. Tajamul Husain** *rose—*

**Mr. Deputy Speaker** : There is another point of order which the honourable Member is raising, I will come to it next.

I am afraid the honourable Member Mr. Naziruddin has himself invited all these points of order because he started one this morning. Apart from any technicalities we may ask Mr. Naziruddin what his purpose is and what important points he has in view in making his motion for circulation.

**Mr. Naziruddin Ahmad**: I think this question .....

**Pandit Hirday Nath Kunzru**: May I ask you, before Mr. Naziruddin

Ahmad replies, whether you have come to the conclusion that the right of the member to move the re-circulation of the Bill is subject to the discretionary power of the Chair ?

**Honourable Member rose—**

**Mr. Deputy Speaker:** Order, order. Members must respect the Chair. When I stand up, they will kindly sit down. I think I have heard sufficiently. Is it not open to the Chair to ask for reasons ? It does not mean that I have come to a conclusion one way or the other. I am trying to make up my mind. I have heard Mr. Bharathi's point. Apart from the question as to whether the Chair, under the rules, has got the right to allow or disallow, I want to know on what grounds—if there are any—this motion should be accepted. After hearing that, I shall give my ruling.

**Mr. Naziruddin Ahmad:** My reply to that is two-fold. The first is the admissibility of the motion as a matter of law, and secondly as to the reasons for the motion, they are matters of merit. At present, I have been asked by the Chair not to make a speech and I have been entirely prevented from giving the arguments on the merits as to why this motion should be accepted. I submit a distinction should be made between the legality and admissibility of the motion and the grounds on which it is based for the acceptance of the same by the house. I submit that at this stage, in order to admit the motion which I have made, I think. Sir, I may not say anything at all.

**Mr. Deputy Speaker:** I have heard sufficiently on this matter. So far as Mr. Das, point that this motion is one of a dilatory nature, I consider that this motion differs materially from the one referred to by the Honourable the Minister for Law. He quoted the rulings of the Chair and gave the instance of ruling No. 1 on the postponement or adjournment of the debate. When motions for postponement for which there are no particular rules of procedure are made, it is open to the Chair to treat them as dilatory motions and require to be satisfied on what substantial grounds an adjournment of the debate is necessary. So far as the present motion for circulation is concerned, it is one for which provision is made in Rule 52(2). The honourable the Minister for Law referred to the analogy of adjournment motions, but regarding adjournment motions there are specific rules laid down here, giving power to the Speaker to come to a conclusion as to whether *prima fade* a motion is in order or not. I am referring to rule 36. The right to make adjournment motions depends upon certain conditions as in the case of questions. Unless a question comes under one or other

categories provided for under the rules it is open to the Speaker to disallow it; similarly, with respect to adjournment motions also, there are six conditions which must be satisfied. There is provision also for asking for leave. First of all, it is open to the Chair, if it so chooses, to say that a motion is not in the public interest, it is old and so on. Secondly, even if he chooses to admit it, he must ask if the motion has the support of at least twenty five members of the House; then leave is granted. In such cases special provisions have been made. This present motion for circulation does not fall in the same category as the others.

As regards ruling 120 on page 81, it refers to Select Committee motions. I do not find any ruling of the Chair till now, in either of these two books " Decisions of the Chair " in point stating that a motion for re-circulation is a dilatory motion. In these circumstances, I do not want to curtail the powers of the house. It does not mean, if I allow the motion, the House is obliged to accept it. Even if it is moved, the House may reject it after debate if it is not satisfied. Under these circumstances, inasmuch as the rulings are not clear on this point, I do not want to throttle this motion. The honourable Member may proceed. I have already said that honourable Members will first move the motions standing in their names and then there would be a debate on all the motions together. The next amendment stands in the name of Pandit Mukut Bihari Lal Bhargava and Shri Junjunwala.

**Pandit Mukut Bihari Lal Bhargava :** The motion moved by my honourable friend Mr. Naziruddin Ahmad is substantially the same. Therefore, I would like to support his motion.

**Mr. Deputy Speaker:** He need not give his reasons for not presenting. What about Mr. Junjunwala ?

**Shri B. P. Junjunwala (Bihar : General) :** I join my friend Mr. Bhargava.

**Mr. Deputy Speaker :** So he does not press. Nos. 7 and 8, I have already said are out of order. The scope of the Bill is confined to the provinces and not to any acceding State.

**Mr. Naziruddin Ahmad :** In regard to States which have entirely united themselves within the Indian Dominion, they stand on a different footing. The Eastern States have combined with the province of Orissa. They are now part of India. The bill will apply to them.

**Mr. Deputy Speaker :** I can understand it only this way,—Whether they have become part of a province or not if they are parts of a province, the Bill will apply. It is not necessary that a copy of the

Gazette should be sent to every village and every corner of the country. If the State has become a part of province, it takes all the rights and liabilities of the province. I do not see any reason why the Bill should be once again circulated. Therefore I rule admenment No. 7 is out of order. No. 8 is also out of order. No. 9, does Mr. Bhargava move ?

**Pandit Thakur Das Bhargava :** I have already said that I do not propose to move.

**Mr. Deputy Speaker :** Then the next amendment. Mr. Naziruddin Ahmad.

**Mr. Naziruddin Ahmad :** Sir, I beg to move as an alternative to the one which I have already moved:

"That the Bill be re-committed to the same Select Committee, to which it was sent, for a further report thereon with reference to the original Bill which was referred to it on the 9th April, 1948. "

**Mr. Deputy Speaker:** Amendment moved:

"That the Bill be re-committed to the same Select Committee to which it was sent for a further report thereon which reference to the original Bill which was referred to it on the 9th April 1948. "

**Shrimati Renuka Ray :** In view of the Speaker's ruling, it is out of order. It goes against the Speaker's ruling.

**Mr. Deputy Speaker:** The re-circulation motion is before the House. Why should the House not consider this motion also after all ?

**Shrimati Renuka Ray:** It goes against the Speaker's ruling of the other day.

**Mr. Deputy Speaker :** May I ask the Lady Member how it goes against the Speaker's rulling ?

**Shrimati Renuka Ray :** The Speaker ruled that the Bill is the same as committed to the Select Committee and therefore there cannot be a motion for recommittal to the Select Committee. There has been no substantial change in the Bill.

**Mr.Naziruddin Ahmad :** There are many substantial changes as I shall show.

**Mr. Deputy Speaker :** No speeches across the benches please. So far as the arguments advanced by the Lady Member are concerned, what I feel is this. The Speaker certainly said that the Bill considered by the Select Committee is not different from the one committed to it. But recommittal may be on various other grounds. Therefore, unless any objection is taken on other grounds .....

**Shrimati Renuka Ray:** The words " original Bill " are there.

**Mr. Deputy Speaker :** Original Bill is the same as the other Bill. Therefore, he has said " original Bill ". We will drop the word " original " .

**Shrimati Renuka Ray:** I would humbly submit that the word " original " is there. Therefore, we cannot drop it now from the motion.

**Mr. Deputy Speaker :** The Speaker ruled that the Bill that came out of the Select Committee was the original Bill and therefore there is no harm in using the word " original ". The objection taken was that the original Bill was not considered by the Select Committee. Hon'ble the Speaker ruled that it was the original Bill itself that was considered by the select Committee. Therefore, the honourable Member has stated in his amendment that the original Bill be recommitted to the Select Committee. The argument advanced by the Lady Member is against her own objection. I find there is nothing wrong in this motion.

**Shri R. K. Sidhva:** The Mover's intention is quite different. He does not consider this Bill as the original Bill and therefore he wants this to be sent to the same Select Committee.

**Shri H. V. Kamath :** Though the intention of the Mover is clear, I think my honourable friend Pandit Naziruddin Ahmad, in drafting the amendment has slightly over-reached himself. I would suggest to him that he may reconsider the whole matter and bring it up again sometime later.

**Mr. Deputy Speaker :** I do not consider that the use of the word ' original ' affects the position at all. On the other hand, the Speaker's ruling was that it was the original Bill that was referred to the Select Committee and that it was that Bill that came back in a modified form. I cannot accept that as an objection. There is no good, spending more time over this matter. Amendment No. 13 may be moved.

**Pandit Mukut Bihari Lal Bhargava :** My amendment is substantially the same as the one moved by Mr. Naziruddin Ahmad. I will speak in support of it and not move mine.

**Mr. Deputy Speaker :** The honourable Member will then have to take his turn after that of the Movers of the other amendments. Amendment No. 14 is not moved.

**Mr. Naziruddin Ahmad:** I intend moving my next amendment if my amendment No. 10 is passed.

**Shrimati Renuka Ray:** I rise to a point of order. Amendment No. 15 goes against the Speaker's ruling.

**Mr. Deputy Speaker:** The Speaker's ruling does not cover this point. This House may not be satisfied with the re-arrangement made

by the Select Committee. Therefore the original motion that it be referred to the Select Committee can stand. There is no point of order so far as this matter is concerned. Mr. Naziruddin Ahmad: Then, Sir I move:

" That the Bill be re-committed to the Select Committee with instructions for report on the original Bill as presented to the House restoring the original arrangement of self-contained separate Parts and Chapters for enactment separately".

**Mr. Deputy Speaker:** I am afraid, I must disallow this amendment. As there can be no objection to the re-arrangement of Parts and Chapters, I rule this amendment out of order.

**Shri B. Das:** Sir, before the next amendment is moved, I want your ruling as to whether one member can move five amendments ?

**Mr. Deputy Speaker :** Alternative amendments can be given notice of. The honourable Member has been sufficiently long in this house to know this.

In the next amendment of Mr. Naziruddin Ahmad, the only addition is of the words "31st December 1949 ". I do not think he need move amendment No. 16.

**Mr. Naziruddin Ahmad :** The Select Committee referred to there is a separate select committee.

**Mr. Deputy Speaker :** I do not think I can allow this amendment to be moved. The honourable Member must have given the names of the Members for the Select Committee at the time of giving notice of the motion.

**Mr. Naziruddin Ahmad:** I have divided it into two parts. First of all there is the idea of the Select Committee. If it is acceptable .....

**Mr. Deputy Speaker:** The house cannot be asked to give its opinion first in a matter of this kind. As the honourable member has not given the names of the Members for the select committee to the Chair earlier, his amendment is ruled out of order.

Discussion on the general motion may now be resumed. I call upon Seth Govind Das to speak now. Seth Govind Das: *Sabhapalhiji* .....

**Shri L. Krishnaswami Bharathi :** During general discussion the honourable Member who has moved an amendment has the first right to speak.

**Mr. Deputy Speaker:** The honourable Member will leave it to the Chair. The Chair knows the procedure.

**Mr. Tajarnul Husain :** I have been trying to raise a point of order for a long time. Sir, I shall be very brief. The honourable member Mr.



Naziruddin Ahmad who is very keen on punctuation, on commas and full stops etc. has given notice of this amendment that this Bill be circulated. This is absolutely out of order. The honourable member should have worded his amendment thus. This Bill be re-circulated. That is my point of order. This is what the relevant rule says : ' any member may move as an amendment that the Bill as reported by the Select Committee be re-committed or re-circulated as the case may be for the purpose of obtaining opinion or further opinion thereon '. Therefore, the honourable member who is very keen on commas and full stops etc. should have put the words " re-circulated for further opinion ". My point of order, therefore, is that as the wording of this amendment is not according to the rules, it may be ruled out of order.

4 P.M.

**Mr. Deputy Speaker :** It is true that the honourable member who has tabled this motion, who is ordinarily careful with reference to punctuations has committed there error of not putting the word ' re ' I ought not to decide it is a matter of form, but as one of substance and this motion for circulation comes after the report of the Select Committee has been received. Therefore, it means under

the circumstances only ' re-circulation '. I have already given the ruling. The ruling will stand. The debate will be continued by Seth Govind Das.

**Shri V. S. Sarwate:** Mr. Deputy Speaker, Sir, I want to bring to your notice that I have already given a motion for re-circulation and it is based on those two motions. I do not know, why it was omitted in the consolidated list. These two motions are dated the 21st August 1948. I do not wish to take further time of the house. I will read the motion so that it can be taken up for further discussion. The motion stands thus:

"That the Bill as reported by the Select Committee be re-circulated for the purpose of obtaining further opinion thereon "

**Mr. Deputy Speaker:** Have honourable members got copies of this notice ? (*An honourable Member:* " Yes, Sir ") I will ask the honourable member to read it out.

**Shri V. S. Sarwate:** The motion runs as follows:

" That the Bill as reported by the Select Committee be re-circulated for the purpose of obtaining further opinion thereon "

**Mr. Deputy Speaker :** When was this notice of amendment given ?

**Shri V. S. Sarwate :** Notice was given on 1st August 1948. The

amendment forms part of Supplementary list No. 2.

**Mr. Deputy Speaker :** The motion was made *on* the 1st August and the 12th of August is the date of the Select Committee's report and possibly a week later it was presented to the House.

**Shri L. Krishnaswami Bharathi :** The motion was made on 31st of August.

**Mr. Deputy Speaker:** The motion need not be made. It is after the presentation of the report. But all notices lapse after the session is over. A fresh notice should have been given. I do not know if honourable Members have got copies of this.

**Shri Jaspal Roy Kapoor:** I have got a copy of this. It is a consolidated list ; Notice of Amendments..... This was sent from the office on the 28th August 1948. There are twenty-four amendments mentioned in this list and Mr. Sarwate's amendment stands as the fourth on this list.

**Mr. Deputy Speaker :** These notices were all for the last session. These notices have all lapsed at the end of that session. Only those amendments, copies of which have been placed on the table before each honourable Member now, these only will have to be taken for consideration. The other notices have lapsed. Therefore further debate will be continued by Seth Govind Das.

**Seth Govind Das:** (*English translation of the Hindi speech*) Mr. Deputy Speaker, I find that the supporters and opponents of this Bill can be divided into four groups. One of the opponent groups consists of those persons who oppose this measure with the same viewpoint as was exhibited by certain antagonists at the time of enactment of law for the abolition of *Sati*, the law which was got passed by the late Shri Ishwar Chandra Vidyasagar for widow-remarriage and the measure put forth by Mr. Sharda for the prevention of child marriages being brought on the Statute Book. At the time of Sharda Bill, I was a member of the Council of State and I personally know the opposition that was then meted out to this Bill. This group is of the opinion that no change can be made in that what has been prescribed in the text of our *Vedas*, *Shastras* and *Smritis*. I do not belong to that group. It would be noticed even from reference to our *Dharmashastras* that if one *Rishi* (Sage) said something from time to time, the other said something else. Had this not been the case, our *Rishi* would not have written. *Smritis* numbering more than one hundred. If you go through these *Smritis*, you will find that the tenets laid down in one *Smriti* differ those contained in the other. Each of these *Smritis* enunciates a different

principle. Then just as I have stated, I am not one of those groups who have opposed almost all the reforms that have been introduced hithertofore.

The second opposing group is that which on the one hand believe that there is obviously a necessity for making reforms in these affairs, but on the other hand, it holds that this is not the proper time for the enactment of such a legislation. This should be brought forth only after the new elections have taken place, and when our new representatives have been elected. I would like to say that there will not be any harm if instead of making any change in the Hindu Law at present, we do this even three years hence. This is a subject over which the whole country has got to think; all of us have to think, all of those who are sitting here have to think and those who are likely to occupy these seats in this House in the future shall have to think. Therefore. I feel that there is a good deal of force in the arguments advanced by the second group that it is neither the proper time nor the place to bring forth such a measure, and for this reason, I would urge that we should consider this aspect.

Just as I have stated, even the supporters of this Bill can be divided into two groups, one which does not at all like to see any of our old traditions, and does not want to recognise the fact that this country is one of the ancient countries having a brilliant past, glorious history, high culture and great traditions. Such type of reformers do not at all care as to what our past heritage is and how are we to reconstruct our country today ? These reformers have been considerably influenced by the Western education, and have scant regard for the ancient history, culture and even the old traditions in the sphere of social reforms. I would like to say that if such sort of reforms are introduced in this ancient country, (his *Bharatvarslul* (India) will not longer remain as *Bharalvurshu*—but it would become something else. The other group of reformers is that which believe in the necessity of reforms being introduced but after having due regard to our ancient history, culture and traditions. I do not belong to the first group hut to the second. I admit that it has become absolutely necessary to introduce reforms, but in spite of all this, we should carry out (he reforms after keeping in view our old traditions, ancient culture and civilisation.

At this time when we are framing our Constitution, when we have already passed the clauses relating to the fundamental and justiciable rights and when it is hoped that our Constitution will be finally adopted sometime during the period intervening between the 16th of May and

15th of August next, it would have been quite in order had this measure been brought forth in consonance with the provisions of the new Constitution. Today when we call our country a ' Secular State ', when we admit that all the persons in this country—whatever religion they believe in, to whatever community they may belong, may be Hindu, Muslim. Sikh, Parsi—whoever he may be—he should be given equal rights of citizenship. Therefore, I would say that the Honourable Dr. Ambedkar should have presented to this House such a Bill which would have concerned not the Hindu's alone, but would have been made applicable to all the citizens of this country. While admitting this country as a ' Secular State ', the idea of introducing a Hindu Code Bill seems to me quite inappropriate. Then again if we now see this Bill, we shall have to admit this that it.....

**Shri R. K. Sidhva:** The Honourable Dr. Ambedkar referred to the ancient *Shastras*. You may also point out which of the *Shastras* go against the provisions of Hindu Code ?

**Seth Govind Das :** Now if we see this Bill, we find that it contains many such Clauses to the acceptance of which there should not be any objection. And if at all this Bill is not postponed but is passed into Law, I am sure we shall accept these Clauses without indulging into any sort of controversy. But along with this, we also feel that it contains many such Clauses the acceptance of which is susceptible of being considerably harmful. The Honourable Dr. Ambedkar has himself admitted today that many of the Clauses are of controversial nature and he has also thrown sufficient light on these controversial issues. The first controversial issue is ' marriage ' and ' divorce '. If we take up the ' marriage ' and ' divorce ', I would be prepared to accept one thing at least that we should make some such change in our legislation which would do away with the Caste System. And if any *Brahmana* wants to marry a *Sudra* or a *Sudra* a *Brahmana*; or setting aside the case of *Brahmana* and a *Sudra*, if any Hindu wants to marry a Muslim or any Muslim a Hindu, or if the members of any community wants to have inter-communal marriages, there should not be any bar to such marriages being solemnised. This Caste System has ruined our country. It has resulted in the remification of our country and society into small parts—may even the smallest sections. All of us are very well aware of the disabilities that exist in the marginal sphere today and which are the outcome of this dismemberment. The old people also know this and even today—they look upon the solemnization of such marriages with abhorrence. They say that they have to marry their

sons as well as daughters against their wishes. But I fully support such a freedom being given. I am even a supporter of ' divorce '. I would submit that notwithstanding the fact that no ' Marriage Code ' has so far been invented in the world which may be regarded as the panacea for the removal of all ills, still we have got to see that if the husband and wife cannot live a harmonious life, they should be given the right of divorce. The Honourable Dr. Ambedkar has stated that the system of divorce already prevails among 90 per cent. of the people in this country. These 90 per cent. are called *Sudras*. I, on my part, do not find any difference between the *Brahmana* and *Sudra*, and feel that it would be the greatest crime to call them *Sudras* even....

**The Honourable Shri Jagjivan Ram** (Minister of Labour) : Does it not cut at the root of Hindu religion ?

**Seth Govind Das:** Divorce exists amongst the 90 per cent., of the *Sudras*. In this case too, it so looks to me that if we pass this legislation in utter disregard of their customs and usages, then 90 per cent. of the people .. ..

**Shri Raj Bahadur** (United State of Matsya) : Sir, may I request the honourable member to use any Hindi equivalent for the word " *Talaq* " (divorce) ?

**Seth Govind Das:** I feel that the honourable member does not understand the implications of the Hindi language. All those words which have been included in Hindi belong to Hindi alone—may it be ' *talaq* ' or anything else. If he still wants to know the Hindi equivalent of ' *talaq* ', I would tell him that this can be substituted by the word " *Vivah Vichhhed* " (dissolution of the conjugal rights).

I was just telling you that if this legislation is passed after brushing aside the customs and usages prevalent amongst those 90 per cent. of the people, then it would mean that they would not be able to divorce in their traditional manner and they would thus be confronted with many difficulties. Therefore, it is bound to give rise to a very great difficulty inasmuch as it runs counter to the wishes expressed by the honourable Dr. Ambedkar that everybody should be given the full liberty to marry and divorce. I am in favour of such sort of liberty being completely given to all the men and women.

The Honourable Dr. Ambedkar also pointed out that 10 per cent. of the people amongst us who are called Caste Hindus Viz., *Brahmana*, *Kshatriyas*, or *Vaishyas* want to thrust some thing upon those who form the 90 per cent. It so looks to me that those of us—who are ten per cent. in number—who form the intelligentsia want to load a few

things on those comprising of 90 per cent. It is not the *Brahmana*, *Kshatriyas* and *Vaishyas* who put the burden, but this is done by those people who have managed to come to this Assembly in some way or the other. I would also tell my sisters that I am not prepared to accept this view that my sister members, Shrimatis G. Durgabai and Renuka Ray and other lady members who are sitting in this House represent the women; or those sisters who sit in the visitor's galleries represent them. I admit that those who are not present here, those who do not come in the visitor's galleries can represent this country better than those who are sitting here. We shall have to admit that the allegation which is being made today that some high-caste people want to thrust their opinion upon the low-castes is not correct. But in reality the position is that the ten per cent. educated people want to thrust their opinion upon the remaining 90 per cent. Without knowing anything as to what is the will of the people in this country, they should not thrust their opinion upon them. I do not want that any legislation should be passed in this House which is against the wishes of the people.

**Shrimati Renuka Ray :** Do 90 per cent. of the people know that you are drawing up a constitution ?

**Seth Govind Das :** We know that the people are with us. To talk as if this is your own concern is not correct. We have come with a mandate from the people in that respect.

The other thing which has been mentioned here is in regard to ' Succession '. It has been stated that we are required to carry out drastic reforms in the law relating to Succession. I agree that there is a great scope of reforms being made in the Succession System. And I also admit that it would amount to the greatest possible injustice being done to the females if they are not conferred upon the right of succession and thus precluded from inheriting the property. The women should be given the right of succession. Now the question arises as to what extent should such right of succession be vested in the females. The Honourable Dr. Ambedkar has in support of this quoted from the *Smritis* of Manu and Yagnavalkya and pointed out that these *Smritis* also confer upon the females the right to inherit property to the extent of one fourth. I would like to say that in my opinion some improvement should necessarily be made in the domain of succession even if these are the views held by Manu and Yagnavalkya. There was a time when the matriarchal system existed in this country or even in the world. But in the present day society, the matriarchal system has been replaced by the partriarchal. So long as the matriarchal system

existed in this country as well as in the world and the husband used to come and stay at the bride's house after marriage, it was quite appropriate that the daughter should have a share in her father's property. But according to my viewpoint now when the patriarchal system is in vogue and the girl leaves her father's house for that of her father-in-law; it would not be proper to give her any share out of the father's property. In my opinion the daughter-in-law should be given the right to share her father-in-law's property. As soon as the marriage is consummated, the daughter-in-law should be given the share equal to that of the son. Today the son enjoys the full right, and if any woman becomes widow, she is entitled to the right of maintenance only viz., food and clothing. I am totally against it. Therefore, I would urge that the women should undoubtedly be given the right to share in the property, but that should be restricted to her father-in-law's property only and not that belonging to her father.

**Shri Muhan Lal Gautam** (U. P. : General) : If there is no father-in-law ?

**Seth Govind Das:** Then in the husband's house.

**Shri Mohan Lal Gautam:** If there is no husband.

**Seth Govind Das:** Then in the son's house.

**Shri Mohan Lal Gautam :** And if there is no son ?

**Mr. Tajamul Husain :** And if she is not married then what would she do ?

**Seth Govind Das :** That is a separate thing. They do get from some source or the other. In the example which has been cited here that when there are twelve sons and thirteenth a daughter, and the twelve sons have got the right to distribute their father's property, then why should not the thirteenth daughter be given the same right ? I would say that all the twelve sons live in their father's house. The distribution which the twelve sons make is made at the same place.

**Shri Krishna ChandraSharma** (U. P.: General): If the daughter also wants to live in the father's house ?

**Seth Govind Das:** Since the daughter has got to adopt another house, this cannot be made applicable in her case. Another thing that has been added in respect of succession to property is that the right of succession will not be governed in accordance with the contents of the will. In cases, where the wills are not executed, disputes will arise. Not only this, disputes will arise even otherwise. The Honourable Dr. Ambedkar who is a renowned lawyer is aware of the fact as to what percentage of the will executed hithertofore were brought up before the

Courts and on how many wills were the suits instituted ?

I am afraid that as soon as the will comes in, neither *the* sons nor the daughters would be able to share the property under the provision of this law which seeks to confer upon them the right of succession. All that property will be grabbed by the lawyers.

Then again another thing will happen. The Honourable Dr. Ambedkar wants that the daughters should also be given the right of succession to the property. Then I would submit that in our society which is undivided at present, when the fathers execute the will, they will not bequeath anything to their daughters, but would give to the sons alone, and thus this would defeat the very object with which you want to confer the right of succession on the women. In regard to succession, I would like to say that just as Dr. Ambedkar has himself admitted, it is a very intricate subject. It so looks to us—we might or might not be Socialists or Communists—that on the one hand the industrialists have raised the voice that the industries are not being developed in this country and on the other hand the question of succession has been mooted out. Therefore, the best thing would be that you should abolish the system of private property. If after the liquidation of this private ownership, a new society is evolved—I do not say that the structure of that society should be based on the principles of Socialism and Communism—but I have since formed this opinion that a new class of society should be built after the liquidation of the individual holdings. If our capitalists see to this they will no doubt find that this wealth is no longer a source of solace to them. I belong to that very class which can be termed as capitalist. But we see who is deriving the real pleasure out of this hoarded wealth ? I have not come across any such capitalist who can fill his belly by eating and digesting 10 or 20 seers, while a poor man can be satiated by taking half a seer or three quarter of a seer. I have also not seen any such capitalist who puts on about 100, 200 or 400 yards of cloth at a time, while a poor man can cover his body with only five or six yards.

**The Honourable Maulana Abdul Kalam Azad** (Minister of Education) : Some people do war !

**Seth Govind Das** : I am accustomed to live in palaces, and I would like to say that if any capitalist is made to sleep in one of the large halls of his palace, he cannot enjoy the sleep. For sleeping purpose, only one room measuring about 12 or 14 feet is required. Now-adays wealth has become an affliction—for the wealthy too. Those people who do not get this, they desire to acquire it and those who have got it



suffer great hardships and on account of that they cannot live peacefully.

**The Honourable Maulana Abdul Kalam Azad** : And they do not want us to give up also!

**Seth Govind Das** : They do not want to give up because the man who discards that wealth is looked upon with great esteem in the society.,

**Shri Sita Ram S. Jajoo** (Madhya Bharat): The man who renounces this or gives it in charity is also equally respected.

**Seth Govind Das** : It is alleged by our Socialists and Communists that all the capitalists are robbers, dacoits and wayfarers. Some of the Socialists, Communists might differ from this. I cannot ascribe this to all of them. But many of them would renounce their Socialistic and Communistic creed if they can acquire this wealth. The hoarders of wealth are even today held in esteem by the society. We should try to overhaul the conceptions and values of the society in such a manner so that the capitalists may in reality be treated as dacoits and robbers; and then only I would say that no capitalist would like to wear this collar around his neck. Therefore, with a view to tackle this knotty problem of succession, I would urge that our Honourable Law Minister Dr. Ambedkar may bring forth such a measure which should seek to abolish the system of private ownership and thus ameliorate the condition of those people who have fallen a victim to this.

**Shrimati G. Durgabai** (Madras : General) : Will you not oppose that?

**Seth Govind Das**: In my opinion these are the only two points in this Bill which are subject to good deal of controversy. I am also of the opinion that keeping in view the trend of the time and without indulging into any sort of controversy, we postpone the enactment of this Bill till the formation of the new Assembly and in the meantime invite the opinion of the people in this connection; and after ascertaining the wishes of the people, we should bring forth this measure as soon as the fresh elections are held. We should not present this measure in the form of a Hindu Code but the proper course would be to pass it in the same manner in which we have passed our constitution which provides for the rights of every citizen in the country.

**Dr. Mono Mohan Das** (West Bengal ; General): On a point of order. Sir, is there no time limit for allowing this kind of discussion ?

**Mr. Deputy Speaker**: There is no time limit.

**Seth Govind Das**: With these words I would conclude, and say

that I feel it absolutely necessary that reforms should be made in our social laws. I also admit this that those people who oppose this Bill in the same manner in which they behaved at the time of the enactment of laws relating to the abolition of Sati, widow-marriage and prevention of child marriages are not following the right course of action. But along with this I also admit that this Bill has not been moved at the opportune time and we should postpone its consideration at the moment. We should present it only after ascertaining the public opinion. With these words, neither I support this, nor oppose this.

**Shrimati Sucheta Kripalani** (U. P. : General) : Sir, ever since we had a sovereign legislature, no piece of legislation has given rise to greater excitement and controversy than this Hindu Code Bill. If all this controversy had been based on reason and on the merits of the changes proposed in Hindu Law it would have been to the good but much of the controversy is clouded by irrelevant issues. The argument of Religion in Danger has inspired much of the propaganda against the Code. It is urged that it will shake the foundation of the Hindu religion. Those who put forward such argument do a great injustice to their own religion.

Hindu religion is primarily concerned with the spiritual emancipation of the individual, his progress towards self-realisation. The self-fulfilment of an individual stands in need of certain moral and spiritual principles as truth, justice, non-violence, etc. These are embodied in our scriptures. These are unchangeable and fundamental. The social arrangements, institutions, conversations and customs that have evolved through the ages are not religion. The Hindu Code does not seek to disturb the Hindu religion but to amend and modify the Hindu civil law. The law has changed from time to time. It is different from religion and has never been unchangeable and static. The authors of the *Dharma Shastras* changed the law from time to time according to the consciousness of the community at the time. The right to make changes was well recognised by the *Dharma Shashtra*. The Hindu law became rigid and static only after the advent of the British.

It has been the boast of Hinduism that while the fundamentals have remained unchanged, the Hindu social institutions have changed to suit changing circumstances. Continuous adaptability has been the strength and essence of Hinduism. Unless Hindu society is to remain static and dead the law must change to fit with the changing circumstances. We also know that the *Smrities* have not remained unchanged. The *smrities* did include other branches of law besides

those of succession and marriage. These have been dealt with by the Indian legislature and some of them have been superseded. Hindu religion did not flounder. Hindu religion has survived that shock. If Hindu religion could survive the shock of these changes I am sure Hindu society and religion can survive the shock of a little more change.

We have also brought in social legislation of great importance. We have abolished the *Sati*: we have abolished child marriage : we have also abolished to a great extent untouchability. Hindu religion is a very catholic and liberal religion. So the argument of religion in danger does not behove us. Within the fold of this liberal and catholic religion people of various views, customs and manners have found shelter and lived. Today what has happened ? Why have we lost our faith in our own religion that we are raising the cry of religion in danger ? It does not mean that I want to say that all those who oppose us are orthodox and are reactionaries. I only want to point out that in forcing your point of view, you are only doing injustice to your religion when you put forward this argument.

Another argument is this that this Bill should not have been taken up for consideration now and that we have not given the country sufficient opportunity to get acquainted with the provisions of the Bill. As far as I know this Bill has been before the House and before the country for about the last ten years. Some of the measures embodied in the Bill as Succession Bill and Marriage Bill, I think, were introduced in the House in 1943. The Hindu Law Committee was appointed in 1944. Its Report was published, I think, in 1945 or 1946 and the draft Bill has been translated into thirteen Indian languages. Thousands of copies of this draft Bill have been circulated. Even after this if we do not know the provisions of the Hindu Code Bill, then, it is our fault and not the fault of the Government. Besides that the Bill won't be passed in a day here. We will take a lot of time to consider it. It will take a good deal of time when we consider it in detail. At that time we will have enough opportunity to go to the public, to acquaint them with the provisions of the" Bill and also to ascertain their opinion. There is a whispering propoganda, a very strange propoganda, that this Bill should be postponed till after the next general election. Why should it be postponed ? Because this may adversely affect our party's popularity ? Is it befitting or worthy of the Congress to put forward such arguments ? Have we ever considered our popularity before our duty ? If we think that a Bill is just, if we consider that a Bill is for the good of

the people then it is our duty to go ahead with it. To shelve a Bill just in order to catch votes for the next election is not right. I think it is not even honest. For us the good of the people has always been the supreme consideration. If we don't take this point of view, if we don't keep this attitude before us, we will never be able to sponsor any radical change. Whatever be the field of our life when a radical change is sought to be made, we are bound to come against some vested interests and some established custom. There is always bound to be a cry against such changes. If we give up reform on that score then we shall never change anything.

I would like to say this. Much has been said about the volume of opinion against the Hindu Code Bill. I would like to say with all humility that there is also a very good group—an intelligent, thoughtful group—supporting the measure too. And that intelligent, thoughtful group does not consist of women alone. We have a lot of brothers with us in this measure. We have also seen in history in other countries whenever a radical change was introduced, whenever any reform was sought to be brought into being, it was a small conscious minority that forms up the cause, that educated the public, that did propioganda and after some time public opinion veered round it. So I am sure though it may be that there is a volume of opinion against the Hindu Code, if what we are trying to do is just and right, I am more than sure that public opinion will come with us. Not only will it come with us but it will bless us after a time for the good (*An Honourable Member* : " It is alreadyt with us ") measure that we have passed. They say, they have got the majority with them. So this is my answer.

In the heat and controversy many limes we forget that the Bill does not consist of merely the Succession and the Marriage provisions. We have tried to make a uniform and entire system of law. In this entire system of law or Code we have tried to put right a lot of discrepancies, inequities, and injustices. For instance this morning Dr. Ambedkar in his learned speech told us how the provisions regarding guardianship, maintenance, adoption etc. are going to be beneficial to the society. Those who are totally opposed to the Bill have been forgetting the good side of the Bill, the non-controversial side, and have concentrated all their attack on such the entire Bill.

Let us come to the question of Succession itself which is greatly opposed by large sections of the people.

**Mr. Tajamul Hussain:** It is opposed by vested interests only.

**Shrimati Sucheta Kripalani** : It is opposed by large sections. They had levelled two points—against the breakage of the joint family and the grant of absolute rights to women. I will take the second point first. We are seeking to have a society where men and women should be equal, where people of all castes will be equal. We are trying to bring about a perfect democracy of which we have dreamed all these years. We are pledged to give women equal status in society. We are pledged to do away with all sex discrimination and this pledge does not start from the time when we bring into effect the New Constitution. I would like to remind you that in the Karachi resolution these pledges are embodied. After that when we accepted office, then also we again reiterated that there shall be no discrimination on the basis of sex. If men and women are to work equally, if they are to function as equal citizens of the state, if they are to fulfil their obligations towards the state, how can we have such discriminatory rules in the matter of property rights of women ? Unless woman gets her full share of property you cannot expect her to fulfil her obligations to the state. Of course whenever we make any changes, established custom and established rules are disturbed. It causes a certain amount of dislocation and inconvenience, but we have to tolerate them and take them as inevitable. We must not try to enlarge the importance of the inconvenience that is caused to us. Dr. Ambedkar and others have told us that the *Smritis* recognise the right of property of women. What law gave us practice denied us. In practice the right was abrogated. What we are trying to do today is only this.—We are not going against the fundamentals of Hindu religion or Hindu custom or Hindu law; what was granted to us by Hindu law but which was arbitrarily denied to us, we are now trying to take back—or rather you are giving it to us, this which has been denied to us by society all these years. It is merely justice done—long deferred justice.

If you come to modern times, by the Act of 1937 you have given property right to the wife, to the daughter-in-law, to the grandson's wife and so on and so forth. The only person who is left out is the poor daughter. It is but in the fitness of things that now it should be included here. Therefore I do not see what is there to argue much about it. If we have given to other women this right, if women can inherit from the husband's side let her inherit from the father's side which is very natural and right.

**The Honourable Shri Jagjivan Ram** : They want her to develop to the other stages.

**Shrimati Sucheta Kripalini :** In regard to joint family there is a very great feeling about it. I do not know why there is such a feeling. Most of the people I come across are anxious to get out of the joint family. The sons do not like to stay with the father. I see most of the families distributed all over the country. So joint family is a very rapidly crumbling institution according to me. Even the legal position of the joint family is very faulty as Dr. Ambedkar has pointed out to us in the morning. Even under Mitakshara system a member of the joint family merely by expression of his will can bring about a partition.

I would therefore like to ask you where is the joint family about which you are crying so loudly ?

Much was said about the protection that is given to the unprotected women in the joint family. I know in the past in the joint family unprotected women did get protection. Even now some of them do get protection but at the same time we know hundreds of women who, failing to get any shelter in the joint family, having no economic resources of their own, are bounded to a life of degradation and shame. Many of us women, who are doing social work, come across innumerable such cases. Therefore, not only is it right, not only is it just to give woman her portion but it is absolutely essential to give her the share if you want to safeguard the Hindu society about which you speak so loudly.

**The Honourable Shri Jagjivan Ram:** And something more.

**Shrimati Sucheta Kripalani :** So much the better. Give us a little more. You have denied us in the past, make it up now.

As regards marriage, the Bill merely seeks to introduce uniformity of practice to avoid confusion and uncertainty. This may entail a little difficulty to those classes which are governed by the customary law but the proposed sacramental and civil marriages are such that it can be put into practice by the poorest and the most backward classes. So I do not think it will create any great difficulty. There is some objection to the registration of sacramental marriages. I think it is purely sentimental because registration is only permissive. If you do not want to avail of the registration you are free not to avail of it.

**An Honourable Member:** It is compulsory.

**The Honourable Dr. B. R. Ambedkar:** No compulsion.

**Mr. Tajamul Hussain:** No compulsion, either would do.

**Shrimati Sucheta Kripalani :** If I am wrong. Dr. Ambedkar will correct me. It has been put there as a safeguard; that is all.

We come to the question of inter-caste and *sagothra* marriages. I was hearing my friend who preceded me. I do not know how we can wax eloquent over the objection to *sagothru* and inter-caste marriages because I find a very large number of such marriages taking place in the society. If we did not have such marriages it was all right, but when a very large number of such marriages are taking place, either we compel them to have irregular marriage or we drive them out of the Hindu fold or we make them go somewhere or they have to go to the civil registration office and get it done. When it is there, why not accept the fact ? When it is a practice why not recognise it and give it legality ? Therefore, it is but right at this stage, when Indian society has changed so considerably to allow inter-caste and *sagothra* marriages within the Hindu fold.

About monogamy, here also I feel that the society has on the whole accepted monogamy. Polygamy is looked down upon; polygamy finds no favour in our society, though cases do occur. Again, we recognise the current practice amongst an overwhelming majority of Hindus and we legalize it. Moreover as we are trying to bring about a society where men and women are equal, we cannot afford to have a double set of morality for men and women and I should think the men should be happy to have this introduced because by the provision of monogamy we are levelling up the standard of men's morality to that of women. I should think that the men should be thankful to us.

**An Honourable Member:** Very thankful. We can get easy divorces and marry again.

**Shrimati Sucheta Kriplani:** As for divorce, though we do not deny the sentiments of the orthodox, men and women, analysing it, we find, that divorce did exist in our ancient scriptures. The grounds of divorce that we have allowed are extremely reasonable and just. We have not allowed any divorce on frivolous grounds as it has been in some parts of the Western world. Care has also been taken to formulate such a procedure that divorce would be resorted to only under very grave circumstances. If we see the records of Baroda, Travancore, Cochin and Malabar where divorce is allowed, very few people have availed themselves of the law. Only under exceptional circumstances it comes to help the people to get of a very difficult situation. Hindu social tradition is such that we will not on flimsy grounds rush to the court and break up a marriage. The people who fear that the grant of the right of divorce may amount to disruption of the family life of the Hindus are absolutely unjustified.

Then I take Dr. Ambedkar's argument of the morning that divorce prevails among 90 per cent. of the Hindus, so why not extend it to the other 10 per cent. It will be very right and just when we see that these 10 per cent. divorce cases are occurring. If there had been no divorce cases then I would have understood it, but we see that whenever our men and women want a divorce, they leave the Hindu fold and become Muslims or Christians and by doing so they insult those religions of which they make a mere utility. Therefore, we should recognise the existing circumstances and allow divorces.

Sir, I have nothing more to say except that I want to tell my brothers here that we women even when we pressed for our rights have never forgotten the greater good, the larger good. We have been very conservative in this matter. You know even for our political rights we have never encouraged things which we have considered wrong. Even when the British were there, we have always stood for joint electorates. Even in the new Constitution we have never pressed for separate rights for ourselves. We would have pressed for these if we did not think that they go against the benefit of the entire society. If Hindu women benefit, I am sure the Hindu society stands to benefit. This is for the larger good; that is why we are pressing this point.

Here, I would also like to say that our men on the whole been very co-operative and helpful to us. They have not stood against our progress. It may be that this is due to the benevolent influence of Mahatma Gandhi. You all know that Gandhiji was one of the greatest supporters of women's rights. The tradition that he has established has been followed by our men; because of Gandhiji's influence, because of the sympathetic attitude of our leaders, we have never had to fight for the political rights as women of other countries had to fight. Therefore, I am more than sure that now we will follow the good traditions, we will keep up the spirit of co-operation that we have had all these years and all my brother Members will support this Bill and consider this Bill not as a measure of right for the women, not as a measure of justice that you are giving to the woman, but as justice done to the society. This is a measure by which we are trying to make Hindu society healthy and wholesome. The Hindu society is full of defects. We are now independent. If in the world we have to take our status, we have to set our house right; unless we do it we cannot take our position in society. Therefore, let us get together and remedy the defects that are in the house. I only appeal to you and I am sure we will have the support of all of you for this good measure.



*Assembly then adjourned till a Quarter to Eleven of the Clock on Friday the 25th February, 1949.*

**Mr. -Deputy Speaker:** The House will now proceed with the further consideration of the following motion moved by the Honourable Dr. B. R. Ambedkar on the 31st August 1948:

That the Bill to amend and codify certain branches of the Hindu Law, as reported by the Select Committee, be taken into consideration. Pandit Thakur Das Bhargava.

**Mr. Naziruddin Ahmad** (West Bengal : Muslim): Sir, I have moved amendments and I think, it will be proper for me to advance arguments and for others to speak. Instead of that if I have to listen to them now and then speak, where would be the scope for them to reply ?

**Mr. Deputy Speaker:** I think the honourable member who has moved an amendment to the motion will be in a better position if he speaks later because as he knows he won't have an opportunity to reply.

**Mr. Naziruddin Ahmad:** I do not wish to reply.

**Mr. Deputy Speaker:** In that view it will be right that the honourable Member should hear certain speeches for and against his motion so that he may be able to reply and he may speak once for all. I have called Pandit Thakur Das Bhargava (*Interruption*). The duty of regulating the order of speakers is with the Chair. I feel it right to call upon Pandit Thakur Das Bhargava.

**Pandit Thakur Das Bhargava** (East Punjab : General) : (*English translation of the Hindi speeches*) Mr. Deputy Speaker, Sir, the Hindu Code Bill that has throughout India .. ..

**Mr. Deputy Speaker:** In English please.

**Pandit Thakur Das Bhargava:** As this matter is of vital importance so for this very reason I wish to speak in Hindi.

**Dr. Mono Mohan Das** (West Bengal : General) : We can understand the Hindustani spoken by the honourable the Minister of Education. It is entirely different from the Hindi or Hindustani spoken by Seth Govind Das or Pt. Thakur Das Bhargava. As beginners we do not know which is Hindustani.

**Mr. Deputy Speaker:** There is no set standard which is copied here. Whatever is spoken is Hindustani.

**Pandit Thakur Das Bhargava:** Before I begin my speech, (*Honourable members*): " English please ") as a number of honourable

members desire that I should speak in English I have not the least hesitation in paying deference to their wishes. But all the honourable members know that it is easier to express oneself in his own mother tongue rather than in English. So, if they allow me I wish to speak in Hindi. But if they would insist on my speaking in English then I would not have the least objection in commencing my speech in English. (*Honourable members* : " Hindi, Hindi "). As I think that a majority of the honourable members do not. insist upon my speaking in English so I like to speak in Hindi.

**Shrimati G. Durgabai** (Madras: General): Kindly speak in simple Hindi so that we also may be able to understand.

**Pandit Thakur Das Bhargava**: I will try to speak in simplest Hindi. Today when I have stood up to deliver a speech before the House about the Hindu Code Bill a number of conflicting thoughts are clashing with one another in my heart. At the very outset I beg to submit that I am not one of those people who declare this Hindu Code Bill to be the death knell of the Hindu culture, and Hindu Civilization. I wish that the Hindu culture, the Hindu Society and the Hindu Civilization may survive till eternity, till the end of this world. I am, in no way, an opponent to this. I am not at all afraid that this Bill or any another Bill would in the least be able to put the Hindu Culture or Civilization to harm. I wish that those evils that have crept in the Hindu Society since long, and about which Dr. Ambedkar made an appeal before the House in the concluding parts of his speech, may be eradicated; and the appeal may be considered over very thoughtfully with a cool heart. But in fact if the Hindu Society is to be preserved then there is no doubt that if necessity would be felt for repairing the society then repairs will have to be done.

12 NOON

I strongly oppose those persons who hold that this Bill would put the Hindu Culture to an end. I am not prepared to acknowledge even for one moment the fact that this Assembly or the Honourable members of this house, who have the same ability as the *Smritikars* of the old, do not have the right of making any changes in our Shastras or Laws. I hold that the members of each and every community have got the fullest rights to frame laws according to the needs of the time. Today if some one makes an appeal that this being an old custom so we must act accordingly; then about such an allegation I would submit that there is not a single custom that India has not experimented with.

There are certain places in India where the system of inheritance is quite different from the other parts of India. Do we not know that among the Khasi tribes and in some parts of Southern Punjab the entire institution of inheritance depends upon the fact that the entire property devolves upon the daughters instead of sons. There are certain parts in India where instead of the girl going to her father-in-law's place the husband of the girl is imported into the wife's family.. India is such a country where every type of custom and law has been in vogue. Is there any such social system that we have not tried. Only yesterday Dr. Ambedkar told that in some *Smritis* it is mentioned that daughters should be declared similar heirs along with sons. So this provision was present since long. Apart from this I do not know of any other law that can be called a new one. Divorce is customary in many places even today. On going through the old *Smritis* it is found that divorce is mentioned there also. I am not prepared to accept that we must revert to those old ideals simply because for the reason that they are mentioned in the old *Smritis*. If we think that those ideals do not suit our present day society then why should those ideals be kept up. I know that in India there was a time when even the institution of marriage itself was not in vogue in India, and the people did not know anything about marriages. In olden days the system of *Niyog* continued for a long time in India. The Hindu Law mentions 8 kinds of marriages. Some of those kinds of marriages cannot even be called marriages. Can anyone assert that those ideals should be re-introduced in the present times. I do not think there is any. So I do not want to consider the question that is before us today from this view point as to what was in vogue in the olden days, how our ancestors used to regulate the society by framing laws of their own. The question before me is that in the present times what things we require after fully taking into consideration our needs, our legal conceptions and our necessities. This Code has created throughout the whole country a great deal of unpleasantness, restlessness and uneasiness. Some women declare that they would have rights equal to those of men. This Code favours the women. Some declare that women have no rights. Very humbly I beg to submit to this House, that till the time the Bill is under consideration here, we must never pay any attention to the various slogans or any such things like the allegations that this Bill is favourable to women or it is favourable to men. With a cool heart we must think over whether this Bill is appropriate or not. Which man can say that he has not been born of a woman, and which woman can say

that she is not the daughter of a man. So in a matter like this will we not treat our sisters, our daughters, and our mothers with kindness. Do our mothers, sisters and daughters demand that they will not behave properly with their husbands, their brothers and sons. So it is not necessary to introduce any bitter controversy in this matter. I know that this is a very delicate problem. We ought to consider it in the proper mannner and with a cool head.

Before I discuss this point any further, I wish to submit a few things about a question so that at least the honourable, members of this House and my honourable sisters in particular may not think that I oppose or support this Bill with some set ideas. At the very outset I wish to submit that I belong to that school of thought who believes that till the women are not given their proper rights in both the immovable and movable properties their personality will not attain full development. I very strongly oppose the economic dependence of women. I do not like that *sloka* of Sitaji wherein she has said:

*mitam dadati hi pitam bhrata mitam sutah  
amitashyatu dataran bhartarn na pujayate*

I hold Ramayan in a very high esteem but I am not, for one moment, prepared to accept the principle that the women should always be kept dependent. I am not, for one moment, prepared to accept the verdict of a few of the *Smrities* that a woman till she is not married must remain under the control of her father, and after marriage under the control of her husband, and if she becomes a widow then under the control of her son. I oppose this verdict of the *Smrities* not for the reason that it is painful to women. I know that till the women of India will not attain a strong personality, till the women will not improve their condition economically and till they will not have an all round development our genealogy will not, improve. Like men the women also should be given all kinds of opportunities for their development. I think that it is not at all justifiable to look at this question from a narrow angle of vision. We have to decide this question very prudently and keeping in view the welfare and advancement of our entire nation and country.

Since thousands of years we have been believing in certain prevailing customs and rites and have also been preserving them. But along with this we have also to decide our line of action as to how we should act upon the slogans that are being raised in the present day

world like "women must have rights equal to men". We may not accept this principle *in toto* but we at least stand committed to afford them scope and facilities equal to men for their development. We will have to keep this principle in view. Therefore, I wish to submit without any reserve that women must get their lawful rights in the movable and immovable properties. I am strongly in support of this. I also congratulate Dr. Ambedkar for his accepting in this Bill the principle of the Abolition of Caste in marriages and adoption. I do not possess sufficient eloquence to let you know how important I consider this question to be. I look upon this question in this light that it is question of nation-building, it is a question of our life and death. This pertains to basic principles. If any thing has mined India, marred her progress and became an instrument in creating Pakistan, it is this caste system. If there is anything that has entered our society and is eating into the vital : that has made Brahmins enemy of others, the Jats enemies of non-Jats and the Kshatriyas the enemy of all other communities, it is this caste system only. I do not know how can we refuse to follow the path of formation of a class-less society, the path pointed out to this country by Mahatma Gandhi, the Father of the Nation. The two things, that are instrumental in uniting the people of this country, are inter-dining and inter-marriages. As far as the question of inter-marriages is concerned, till this question is not resolved the problem of nation building in India cannot be solved. Therefore, as far as this question is concerned, I am strongly in its favour.

As far as the question of monogamy goes there may not be a single member against it. As far as the consequences of monogamy are concerned I know that its passing would badly affect the area I come from. Because even today, according to the circumstances, it generally happens that when some one dies-leaving his widow, the widow is re-married to the younger brother. I know that in the coming times we should not continue these out of date-customs. I think that if the defects of this out of date system would be told and explained to those people whom it will affect then they would also readily agree to renounce it.

As regards the question of monogamy and the people about whom I am talking I wish to submit that these people according to their needs and intelligence thought out and adopted this principle in that time when widow remarriage was not in vogue in India. Without any reservation, I wish to submit that as far as the questions of monogamy, abolition of caste system and giving of the fullest rights to women, are

concerned I am fully in support of them.

As regards the question of divorce I know that the system of divorce exists in a major portion of India. These days to some people this system of divorce appears to be bad. In fact in a country like ours where according to our customs the women used to commit *Sati*, the opposition of the system of divorce is not a thing to be wondered at. According to our beliefs marriage constitutes an indissoluble relationship, and from this point of view the right of divorce should not be given. But I like to submit that the system of divorce has always been in our country and is still present to this day. If the people wish to walk with their eyes closed, if they do not want to see as to what is happening in the world around them., then it is upto them to do so. Dr. Ambedkar told us that this system is found in 90 per cent. of the people of this country. I beg to submit that these figures are under-estimated rather than over-estimated. As regards the question of divorce and as far as it is in practice in India I am entirely in support of it, not for the reason that it is in vogue in the present day society but for the fact that it is one of our own customs. Therefore I am in favour of divorce.

The question arises that in this Hindu Code Bill, as it has emerged from the Select Committee the main defect is that it does not go far enough. In fact the customs prevalent in our country and the reforms suggested by the Select Committee fall far too short. The people in Punjab are not so backward. As regards social reforms the people of Punjab are far ahead than those of the rest of India. This Code does not go to that extent even. For them this Code is not a kind of social reform but it draws them back instead. If this Code would be shown to any Hindu or Sikh of the rural areas of Punjab then he would say, " Oh Sir, what are you doing ? You are retrogressing us to a great extent. We are far ahead of all this. You want to take us still backward. " The people of Punjab will not be benefited by this Code. The present Code has emerged from the Select Committee in such a form that the needs of the people of Punjab have lagged far behind; the needs have not only been left behind but certain things in this Bill compel us that we will have to throw this Bill out if it remained in the present form. If we want to preserve our institutions then they cannot be preserved in the present form of the Bill, and thus this Bill becomes annoying.

**Shri Mohan Lal Gautam** (U. P. : General) : Quote any example.

**Pandit Thakur Das Bhargava** : I just give an example. After this introduction, with your permission Sir, I beg to submit the objections that I have to raise against this Bill and say to what extent I have to

support this Bill. There are many such provisions in this Bill about which no one may have any objection. There would be a very few persons who would say that they are against all the provisions of the Bill. But Sir, if you were to go through the Bill you would find that there are notes of dissent from 11 out of the 17 members of the Select Committee, and who are they ? Shrimati Ammu Swaminadhan and Shrimati Renuka Ray are among them. Notes of dissent from both of them are there.

**Shrimati Renuka Ray** (West Bengal : General) : These notes are not on fundamental principles.

**Pandit Thakur Das Bhargava** : I am coming to that. To tell the truth these 11 members who have written notes of dissent, themselves oppose this Bill as it has emerged from the Select Committee. I was submitting as to who have written notes of dissent. One of the notes of dissent is from Bakshi Tek Chand who has worked for social uplift throughout his life and is prepared to go to any extent for social reforms. When he also writes a note of dissent then it is for us to think as to where are we going ? If these notes of dissent he carefully read then it would become clear that out of 17 members at least 11 strongly oppose this Bill as it has emerged from the Select Committee. After this introduction I beg to state why I am prepared to move such motions, which are generally considered dilatory against this Bill as it has emerged from the Select Committee.

**Mr. Tajamul Hussain** (Bihar : Muslim) : Sir, I beg to raise a point of information. The honourable member has stated that 11 out of 17 members of the Select Committee have written note of dissent. If they are opposed to this Bill, then I would like to enquire from the honourable members how this Bill came to be recommended by the Select Committee so that we may pass it.

**Pandit Thakur Das Bhargava**: Mr. Deputy Speaker, Sir, in my opinion this question is neither a point for information nor a point of order even. You may go through this Bill yourself Sir. Mr. Bharathi has also written a note of dissent.

**Shri L. Krishnaswami Bharathi** : (Madras : General) : Mine is little ahead of the Bill. I want to enlarge the scope of the Bill. That is my dissenting minute.

**Mr. Deputy Speaker** : Should honourable members go on explaining every remark and every sentence ? It is not necessary.

**Shri L. Krishnaswami Bharathi**: No, Sir, I was ....

**Mr. Deputy Speaker** : The honourable member's note of dissent is

in print. He will have his turn if he wants to offer any explanation. It is no good going on interrupting a speaker and other honourable members also by simultaneously standing up.

**Shri L. Krishnaswami Bharathi:** May I say. Sir ....

**Mr. Deputy Speaker:** I have heard the honourable member sufficiently.

**Shri L. Krishnaswami Bharathi :** On a point of personal explanation, Sir ?

**Mr. Deputy Speaker:** Order, order.

**Pandit Thakur Das Bhargava :** Sir, I would not give Mr. Bharathi the trouble of explaining his viewpoint before the House. I myself present his view point. The note of Mr. Bharathi is that he is no way against the fundamental principles of this Bill. He wants that as a logical consequence the women must be given the right that all these women who own limited estates, he wants that they at once be made absolute owners. I am correct, I think.

**Shri L. Krishnaswami Bharathi:** I am not permitted to reply.

**Mr. Deputy Speaker :** The honourable member Pandit Bhargava may go on.

**Pandit Thakur Das Bhargava:** For this very reason Sir, I was submitting that a number of members of the Select Committee have written notes of dissent on that form of the Bill as has emerged from the Select Committee. With what intension these notes of dissent were written, I will submit later on, but I wish that I may not be interrupted in the course of my speech.

Sir, I was submitting that although this Bill does go to a certain extent and I am prepared to go even beyond that in social reforms yet still I do not find myself in a position to fully support this Bill. And this is quite natural. Even Dr. Ambedkar himself, by whose kindness the Bill has taken this form and who has delivered such a speech of which every Indian and especially every Hindu must feel proud, is not in support of all the provisions of this Bill. Therefore he told that at places the Select Committee has gone out of reason. I do not want to use harsher words. But I say that he also is against this Bill and in this way there are 12 notes in its dissent. So I was submitting that when 12 out of 17 members are against this .Bill then in such a condition the House should not feel astonished if I wish to support the amendment moved by Mr. Naziruddin Ahmad. The reason is quite clear. I do not wish that any of you may misunderstand me. There are many such sections of this Bill about which I do not wish that their passing be delayed even



by a minute Had his motion been dilatory I would not have supported him. Many of my motions also were not dilatory. I know that this Bill is not going to be passed in this Assembly *i.e.* in this Session of the Assembly. A special session of the Assembly will have to be called to pass this Bill. The next session will come off after about 6 months. The objection that I am raising can very easily be decided in this period of six months. With your permission Sir, I wish to submit that I do not want that the Bill may not again be sent back to Select Committee : and for such a move my reasons are quite different. Perhaps some of the honourable members might be thinking that I wish this Bill may anyhow come to an end. I do not want to kill this Bill. I wish that this Bill be passed. I wish that all the good points of this Bill be accepted. So it is necessary to look upon this Bill with a cool heart. It is not necessary to infuse heat. Therefore, I wish that whatever I want to submit, you must hear it with a cool heart and I think that Dr. Ambedkar will not misunderstand it. I wish to submit all this very humbly and not with the spirit of antagonism. But I must have the courage to say what I want to say and I wish that others must interpret it at least fairly if not generously. I submit all this very respectfully and attach no less importance to this. Now I wish to submit that as each and every honourable member of the house knows that new elections are to be held. All the present members have come here by indirect election. The members that are to come after us will come from direct election and adult suffrage. According to the resolution passed by us in the Constituent Assembly the elections will be held in 1950. Only then I would be prepared to call that, as you yourself Sir, had said, an absolute sovereign body. Yet still on the principle of propriety I beg to submit that instead of us deciding a matter that concerns the daily life of 30 crores of people it would be better that those people. Who are to come from direct election and adult suffrage, should decide this issue. I would submit that this will be the proper course. I wish to submit on the principle of propriety. Some people feel that this Assembly can frame the constitution only. This is the same argument that was advanced yesterday that when fragmentation does not take place on dividing a property among twelve sons then there cannot be any if it is further divided so as to include a daughter as well. But I say that " one wrong cannot justify another ".

Shri Mohan Lal Gautam has said that this Assembly is not also competent to frame the constitution even. I do not agree with his views but if you do agree then why are you repeating the mistake ? This is

quite wrong. If you do not hold this view then it is another thing. In my opinion this constitution framing Assembly is a sovereign body. It is perfectly legal and in the same way this house is fully authorised to pass today any laws that it likes. Yet still the sense of propriety, the sense of proportion, demands of us that we must not make haste in this matter. We have been following these principles since thousands of years and therefore I wish to submit that in the next 6 months the sky will not fall down upon our heads, so that we may pass the Bill immediately with undue haste. Therefore I would very humbly submit that as you Sir, have written in your dissenting note: out of these twelve persons, the twelve signs of the Zodiac—you are one of them; and along with you Babu Ramnarayan Singh has also mentioned on page II :

" The members have been elected indirectly and have no mandate from the electorate. The mass of opinion and the majority is against most of the provisions of the Bill and the Bill seeks to alter the fundamental structure of the Hindu Society. "

I very humbly beg to submit that justice demands that the representatives of direct election after being elected to this Assembly should be given the opportunity of deciding this matter. Our much respected and a true leader of the country Dr. Rajendra Prasad, agreeing with this principle, had also written a letter that this Bill as a whole be presented before the coming representative Assembly.

**Mr. Tajamul Husain :** What it was that the Governor-General had written ?

**Pandit Thakur Das Bhargava:** Sir, whatever you say about the Governor-General has been mentioned here. But I very respectfully beg to submit that I highly honour and esteem the opinion of the elders. This matter today concerns me, concerns every woman who lives in any distant village. Everybody will be affected by this and so every one has got a right to express his opinion. Why I do not agree is that yesterday my honourable sister Shrimati Sucheta Kripalani had said that in this manner centuries would pass. This Bill has been on the anvil for the last ten years. It was drafted in 1941. This argument does not appeal me. May I ask how much literacy is there in this country ? May I ask how many women of this country are literate ? I wish to address my honourable sisters here, who are the members of this house and whose opinion I highly esteem; but I would say whether thousands of their sisters who live in villages and towns have the right to express their opinion in this matter. For this reason I would urge my

honourable sisters here that they should have patience in this matter and exercise some restraint. If I were to submit that the opinion of those also be included, who have full right to express their opinion, then this may not be considered a crime. Very respectfully I beg to submit that the people living in towns and villages are not at all aware what the Bill is and what its provisions are. Some honourable members say " *Hear* " " *Hear* ". Very respectfully I beg to submit that those people who have not studied the provisions of this Bill and a number of members of this House have not at all realized what its importance is.

**Shrimati G. Durgabai :** When you consider women of this country fit enough to understand the provisions of your other Bills for reform, don't you think they will be able to understand the provisions of this Bill?

**Pandit Thakur Das Bhargava:** I welcome this interruption, because it gives me an opportunity to explain the real point. Sir, an objection has been raised that once upon a time the Satee Bill was passed, widow marriage Bill was passed, Sharda Act was passed; and the Bill that is before the House today is also of the same category which, according to Shrimati Durgabai, is something higher in level from those that can be passed taking into consideration the opinion of the common people.

**Mr. Tajamul Husain :** May I be allowed to move a point of order ?

**Mr. Deputy Speaker:** What is the point of order, please ?

**Mr. Tajamul Husain:** My point of order is this. Sir, that the contempt of the whole House has been committed by my honourable friend in this way; you heard him out and he says that there are members of this House who have not understood the Hindu Code Bill. This amounts to a contempt of this House and I want a ruling on this.

**Mr. Deputy Speaker :** I do not think that there is anything in this point of order. All that the honourable member means is that the full implications of the Bill may be understood differently by different sections of the people. According to him they have not been understood in the manner in which he would like honourable members to understand it.

**Pandit Thakur Das Bhargava:** Besides this Sir, I do not claim and I am not at all prepared to say that I have understood the provisions of this Bill any more than the other honourable members of the House. About myself I am prepared to say that I have not understood fully all the provisions, all the clauses and all the implications of this Bill and this I can say about all the honourable members and myself in

particular. The honourable members here, who are not lawyers, can say that they have fully understood the Bill; but the lawyers present here cannot say with confidence that they have understood all the provisions of the Bill as has emerged from the Select Committee. I am not permitted in this House but, if I be permitted then I like to put two or three questions to Mr. Tajamul Husain and he should give an answer whether he understands or not. It is not at all my intentions to commit contempt of the House. Very respectfully I beg to submit that it is not at all my intention . . .

**Mr. Deputy Speaker :** Every citizen is presumed to know the Law, every honourable member is presumed to have read this Bill. The honourable member can go on with his speech.

**Pandit Thakur Das Bhargava:** I was submitting Sir, after this introduction, I was submitting why I am in favour of Mr. Naziruddin Ahmad's amendment. Sir, I submitted some facts for your kind consideration, that this House is not so representative as it is to be tomorrow and this is not to take much time, in a few months the new house will come into being and therefore it would have been proper to (postpone the discussion on this Bill till the new house comes into being).

A still stronger argument in favour of my submission is that you, Sir, are well aware of the fact that today property includes two different types of thing. One is lands and the other houses. As far as the landed property is concerned this Bill does not affect it. What will be its effect on succession in a country like India which is mainly an agricultural country and where 90 per cent of the people live in villages. After the death of a person his lands will be governed by one law and his house in the village will be governed by another law. What will happen to me ? If I have some property in Delhi then this property will be governed by one law and my landed property in Bahadurgarh will be governed by another law. My house built in my fields at Bahadurgarh will be governed by one law and my house at Delhi by another law. Is this uniformity ? If such a thing is being maintained then what the result would be? The appointment of an heir takes place at Bahadurgarh whom the Hindu Code does not recognise, then that boy, who is the appointed heir, will of course inherit the landed property at Bahadurgarh but on the residential house of the deceased some one else would have a claim. The boy will get the landed property but will have no claim on the house, then after all where the boy will go ? The effect of this Bill would be that it will not apply on landed property. I

think that Dr. Ambedkar wishes to pass a Bill whereby economic holdings could be made and the landed property of average man may not be partitioned. But when this Act will come into being and when the abolition of zamindari takes place, I am not aware of this.

**Shrimati Renuka Ray:** You can introduce such a Bill immediately.

**Pandit Thakur Das Bhargava :** Respectfully I beg to submit that intentions are not so easily fulfilled in this world as my honourable sister thinks that simply by introducing a Bill this intention will be accomplished. This is a Bill for the benefit of the country, but how many obstacles this Bill is encountering. How much time the Land's Bill, whereby the rights of everybody will be usurped, will take and where will it be passed ? This is under the power of the Provincial Government. I wish that we may make such changes in our constitution whereby, as far as the question of lands is concerned, under the constitution, this may also be within the powers of the Central Government. If this Bill is passed then I see in it the defect that it does affect the residential property and does not include the landed property. This is a great confusion. A change has now been made in the original Bill that now this Bill will also apply to the lands in the Centrally administered area's, i.e., it will be applicable on both the residential and landed properties of Ajmer Merwara and Delhi. In other provinces this Bill does not apply to lands. In Delhi and Ajmer-Merwara this will apply to both the rural and urban properties. This is a great defect of this Bill and which knock out its bottom.

As yet the people are not aware how this Bill would affect them. For this reason only I had submitted that full publicity has not been given to this Bill. I know that if today people were to know that through this Bill such far reaching and fundamental changes are being made in their law of inheritance, changes which will have affect on each and every family of India, then at one time the people of the whole of India on coming to Delhi would present their applications that this law may not be passed. Many people are not aware of this. The knowledge is shared by the members of this House. Bar associations and a few of those who read newspapers. You can well understand how small the number of such persons is. Such a Bill, which affects the entire Hindu Society, has not been given sufficient circulation and no opinions on this have been taken. A committee was set up, it took evidences at many places and the report of the committee is with me. If you would see as to where the members of this Committee went, what they did and whose evidences they recorded; then you would find that the

committee has asked the opinion of some well placed and educated persons only and they have not taken the opinion of a major part of the country. In this there is no question of education. For this Bill every mother and father, who fully realize their responsibilities, can give their opinions. Everybody is affected by this and so every person is competent to give his opinion. Besides this I would submit that nobody has the knowledge of the changes that have been made by the Select Committee in the original Bill. Only the members of the Assembly have information of these changes, the rest of the people do not know what changes the Select Committee has made. Now the question arises that as the Select Committee has made changes in this Bill so its circulation has become very necessary. Leave aside the old question that no law should make rapid changes in the customs of the people till the opinion of a majority of those people, who are to be affected by it, be not taken. The Bill that is being introduced today's one wherein the Select Committee has made such changes as are of vital importance and about which everybody must have full information. For this reason only its circulation is all the more necessary.

Before I submit anything about these changes, I wish to draw the attention of the House towards one point. I regret to say that the Law Department itself which is an embodiment of law because its name even is Law Department, these same people do not respect the law. When these people themselves establish such a procedure that they must not have established, then I will have to say—

### **Urdu script**

I do not want to touch the question that has been decided by your predecessor. That question has been decided. That ruling is final for me. I do not question it. I highly honour that ruling although I know that this ruling according to my opinion was not correct, yet I do not want to question it.

**Mr. Tajamul Husain :** No one can say inside the House that the ruling of the Chair is wrong.

**Mr. Deputy Speaker :** I am sorry the honourable member has not understood Mr. Bhargava at all. What he says is that he does not agree with the ruling but he cannot question the ruling here. It is open to any member to think for himself and also to say that in his opinion he does not accept it, but he is bound by the ruling. I think there is nothing wrong.

**Pandit Thakur Das Bhargava:** I am very sorry that whenever my

honourable friend Mr. Tajamul Husain raises any point of order it does not survive even for a minute. I wish that he may raise such a point of order which I may also be able to reply. I know that at this time he is enquiring from another honourable member whether this Bill applied to lands or not but he pretends and says that he understands this Code Bill. Then I like to submit that I am perfectly within my rights if I say that on the ruling I hold a different opinion. I wish to submit a few other fundamentals that have not at all been touched by the Honourable the Speaker's ruling. Most humbly I beg to draw the attention of the House particularly towards the fact that this House which is a constitution making House, is a master of her laws. None of our matters can be referred to any court in the country. If this house forsakes its principles for the sake of passing a certain Act then we commit such a mistake that we cannot be absolved of its responsibilities. I beg to submit that in this redrafted Bill, reported by the Select Committee, the mistakes that we have committed therein are of three types. Firstly when a Bill comes before the House, comes in the possession of the House, and is introduced in the House, then after this except for the House no member of the House, however big he might be, however good he might be, cannot even change a comma therein without the consent of the House. If there be any clerical mistakes then it is another thing; and if that also be a material mistake then it will have to be printed again and re-circulated and after again being introduced in the House can be referred to any committee. Very respectfully I beg to submit Sir, that I am presenting two or three technical points for your kind consideration.. About these points I will have to submit very humbly to the other honourable member, but not to Dr. Ambedkar as he is familiar with technical rules and things, and he knows how much injustice can be done by forsaking these technical rules. So I was submitting that by forsaking these technical rules except injustice and unlawful things nothing beneficial can be accomplished. Mr. Oslow has been a very famous speaker of the house of Commons. He had said that no work should be done in contravention of the technical rules. For the protection of minorities, for the protection of the House as a whole, there are technical rules, and these rules are of such a fundamental character that whenever the limits will be transgressed nothing except mistakes can be accomplished. This principle has been laid down in the May's Parliamentary Practice, which is the convention of the mother of Parliaments. The convention is that as soon as Bill is introduced it passes out of the hands of the member introducing it and

comes within the power of the House. I am translating the words of May's Parliamentary Practice which I will soon read out to you.

**Mr. Deputy Speaker :** I do not think anybody in the House doubts that any honourable member even though he may be the mover has got the right to change the Bill when once it has been placed before the House. As I understand it, the Honourable Speaker's ruling is that the very same Bill was considered in the Select Committee. Therefore, there is no good canvassing that position. The Honourable the Law Minister did not say that another Bill was considered in the Select Committee though the other draft which he placed before the Select Committee was considered along with the original Bill. As any honourable member is entitled to place amendments before the Select Committee instead of sending piecemeal amendments, according to him, he printed all his amendments and placed them before the Committee. That is the ruling of the Honourable the Speaker. Barring that, the honourable member can go on. Nobody doubts the position stated in May's Parliamentary Practice that it is not open to a member even though he may be the mover of the Bill, to change the Bill when the house is seized of it. The Honourable the Speaker has said this has not been done. We are bound by that; otherwise the honourable member may go on.

**Pandit Thakur Das Bhargava :** I wanted to submit only this much that after hearing your opinion I have become still more staunch on my belief. You have decided that if it is somehow proved that in fact no amendments on this controversy came before the Select Committee then it should be accepted that the redrafted Bill should not have been considered. For this reason I would submit that I have no need to quote the ruling again before you. Sir, I have got a ruling of Hansard Vol. 215 of 1873 wherein at page 302 it has been laid down that if a member gives notice of introducing a Bill and this Bill is printed then that member cannot make any changes in the Bill before the second reading, and if he makes any changes then the Honourable the Speaker gave the ruling that the Bill be withdrawn—the Bill cannot be further discussed.

**Mr. Deputy Speaker:** The position of law is accepted, there is no need to canvass that. I do not think the Honourable the Law Minister denies the position of law that he is not entitled to changes . . .

**The Honourable Dr. B. R. Ambedkar** (Minister of Law): No.

**Mr.. Deputy Speaker:** . . . any comma or semi colon except as accepted by the Select Committee. But it is open to him to place



matters before the Select Committee. I think that was the ruling of the Chair. The honourable member may go on.

**Pandit; Thakur Das Bhargava:** Sir, very respectfully I wish to submit that if the other original Bill is placed before the House then I will have no objection. Had this Bill been considered in the House in this manner then nobody would have any objections. After being introduced in this manner the Bill should have been technically considered clause by clause and word by word. If this procedure has not been adopted and if the Bill was sent to the Select Committee and in the Select Committee it was not considered word by word and clause by clause then I would like to ask if the first Bill was before the honourable member or was it in his pocket or had he come after reading it at his house. I wish to draw your attention Sir, towards Parliamentary Practice. No member of the Select Committee has any claims against this. I have with me strong reasons and I wish to draw your attention Sir, towards them. In the first place perhaps in the majority report it is written: " We confined our deliberations to this redrafted Bill. "

**Shri L. Krishnaswami Bharathi:** May I interrupt ? This is not correct.

**Pandit Thakur Das Bhargava:** The original Bill has not been considered clause by clause and word by word in the actual sense of the term. In the popular sense as the Honourable the Speaker said before and in the sense in which Shri Balkrishna Sharma submitted before the House, the Bill was before us, then I have no objection against the Bill. I am prepared to accept that whatever Shri Balkrishna Sharma and the Honourable the Speaker have stated .... (*English translation of Hindi speeches is over*)

**Shrimati G. Durgabai :** On a point of order. He is questioning the ruling of the Speaker

**Mr. Deputy Speaker:** I understand the honourable member, though I do not understand every word that he says, I am bound to safeguard the ruling of the Speaker. I am not interested in seeing that what I may have said today, may be upset by a Chairman who follows me. The ruling of the Speaker is there. Though the honourable member speaks forcibly on one or two points, I understand that he wants to persuade the house to allow the country an opportunity to consider the Bill. That is all that he means (Honourable Member " NO. no. ". I may say immediately I do not intend to go behind the ruling of the Speaker.) Any arguments that may be advanced for consideration

by the house of the country at large is welcomed but not in a spirit to question the ruling of the Speaker.

**Dr. Mono Mohan Das :** On a point of information. I want to be informed whether the next ten minutes will be taken up by the honourable Member so that we who do not understand Hindustani could return to our hotels.

**Pandit Thakur Das Bhargava :** Since you have been pleased to say that you do not follow me and I want every word to be followed by the House and by your goodself I will speak in my broken English.

**Shri T. A. Ramalingam Chettiar (Madras : General) :** Hitherto you have had no consideration for those who did not know Hindi. There is a large number of them here and if you do not care for them and you do not want them to listen, it is your own look out.

**Pandit Thakur Das Bhargava:** I had already decided to speak in English and my friend's orders are only supplementary. But after what you have been pleased to say, I will continue in English.

**Mr. Deputy Speaker :** Whatever has been beared has been beared in Hindustani.

**Pandit Thakur Das Bhargava:** I am not going to repeat all that I have said as it will not be possible. In future I shall submit to you what I have to say, so that I may not be charged for attempting ....

**Mr. Tajamul Husain:** There should be no repetition.

**Pandit Thakur Das Bhargava:** I do not want to be ordered by Mr. Tajamul Husain. If he does not want to ....

**Mr. Tajamul Husain:** I am addressing the Chair.

**Pandit Thakur Das Bhargava :** I do not want Mr. Tajamul Husain to make unintelligent interruptions.

**Mr. Deputy Speaker :** I am sorry that, Mr. Tajamul Husain goes on interrupting repeatedly. I am here to protect the house so that there is no repetition. It is unfortunate that we are spending much time in this way.

**Pandit Thakur Das Bhargava :** I do not want to repeat. I submit that the manner in which the Honourable the Speaker gave his ruling I respect it and I will not say a word against the ruling, though I maintain. Sir, that ruling is not the last word.

**Mr. Tajamul Husain:** It is the last word in this House.

**Pandit Thakur Das Bhargava :** I am not going to be taunted by these things. I think the House can revise its own order. I can quote a ruling to this effect from the book ' Decisions of Chair '. At the same time, let the house not think that I am asking the Deputy Speaker to

review that order at this stage. I am not doing so. Let the House not be impatient. But may I ask where is the rule that a ruling once given cannot be revised ? There is no such rule. Since I am not attempting to get the ruling revised., this does not arise. What I was saying was that the ruling of the Speaker was to this effect that the Bill was considered along with this redrafted Bill not in the actual sense nor in the technical sense in which we understand what " consideration " is. I submitted for your consideration that in the technical sense in which we use the word " considered " this Bill was never considered.

**Shri Mohan Lal Gautam:** I beg to state that this is a repetition of what he spoke in Hindustani.

**Mr. Deputy Speaker:** In so far as to enable me to understand the full implications.

**Pandit Thakur Das Bhargava:** Without these preliminary remarks I could not make myself understood and those who know would have realized that I could not do more than this.

I was submitting with a view to convince you that as a matter of fact the real consideration, technically so called, was only given to the redrafted Bill. I said that I wanted to submit certain arguments: firstly, the report says that " we confined our deliberations to the redrafted Bill ". Secondly, Sir, the dissenting note of Bakshi Tek Chand as well as of Balkrishna Sharma says the same thing. I do not want to read further because the members have read it and it will be waste of time to read it again. When Mr. Balkrishna Sharma spoke the Honourable the Speaker was pleased to accept his statement. He again repeated in his speech that " we confined our attention to this redrafted Bill " : and when you see the report you will find that in the report itself there are some indications for instance in clause 99 that only the re-drafted Bill was considered in the technical sense.

**Mr. Deputy Speaker :** I am not able to follow what the honourable Member is driving at so far as this is concerned.

**Pandit Thakur Das Bhargava :** I am sorry I have not heard what has fallen from Mr. K. C. Sharma.

**Honourable Members :** Order, order.

**Mr. Tajamul Hussain :** Sit down !

**Mr. Deputy Speaker:** If you will permit me I will try to get along. There are two questions. If it is a question that we ought not to proceed with this Bill, then that point has been decided. The Bill has been taken into consideration. The Speaker has said that this Bill was before the Select Committee and with the other amendments that have

been tabled. Therefore, so far as that matter is concerned, I may immediately say I am not in a position to go beyond the ruling of the Speaker. Apart from the question of a similar case in the Civil Procedure Code, a ruling has been given and it is not desirable to go over it in the same case. It may not be a precedent for some others.

When it comes up in any other connection it will be open to the Chair or members of the house or whoever might occupy the Chair for the time being to go behind the previous ruling. At this stage in the same proceedings I am not prepared to go behind it. In these circumstances I would like to ask the honourable member for what purpose these arguments are raised. If as I understood sometime ago, it is only for the purpose of persuading the House to accept the motion for circulation in view of the fact that the Select Committee did not look into the original draft but the other one, both of them were before the House. So it is not as a point of order but for the purpose of persuading the House, which I can understand. For that reason May's Parliamentary Practice and other rulings need not be referred to. So far as the matter of law is concerned enough has been said and I would request the honourable member, if possible, to conclude this portion of his argument and proceed to some other matter.

**Siri R. K. Sidhva** (C. P. and Berar: General) : Sir, the previous speaker. Pandit Thakur Das Bhargava said that the Speaker's ruling is not final. May I, Sir, draw your attention . . .

**Mr. Deputy Speaker:** I do not want any further arguments on the matter. I have already given my ruling that so far as this proceeding is concerned the Speaker's ruling is final. I cannot allow any questioning of that. It is therefore unnecessary to reinforce the argument or to strengthen my hands.

**Pandit Thakur Das Bhargava:** Sir, it is far from my mind to invite you to give a ruling contrary to the Speaker's. I am not going to request you to do that. I can quite understand that it is not desirable to review a ruling when it is given in the same case, though I know according to law you are perfectly competent to give another ruling. The law is not so narrow as not to provide for cases in which injustice is perpetrated. So I shall desist from speaking any further on this subject that the ruling of the Chair may be looked into. What I am submitting is that there are several motions before the House and it is not the only motion for circulation. This Bill could go before the same Select Committee and it could come back to the House in 15 days. As I submitted already it is not a matter of dilatory tactics. All that I want is that the house should

adopt a procedure which is according to law and which is fundamentally right. I am a member of this House and as such I have a right to see that the Bill sent to Select Committee is considered in a manner which the law requires. There is no escape, therefore, from its recommittal to the same Select Committee. This is the reason which I want to submit before you. After all the taxpayer has to pay for every minute of the time taken in this House and I hate to take a dilatory or obstructionists attitude. All the same . . .

**Mr. Tajamul Husain:** You are doing it all the same.

**An Honourable Member:** He is again on the Speaker's ruling.

**Pandit Thakur Das Bhargava :** I hope the house will bear with me for a little more time ...

**Mr. Deputy Speaker:** Is the honourable Member likely to take more time ?

**Pandit Thakur Das Bhargava:** Yes, Sir.

*(The House rose for lunch)*

### **The Assembly re-assembled after Lunch at Half Past Two of the Clock**

*Mr. Deputy Speaker (Shri M. Ananthasayanam Ayyangar) in the Chair.*

**Pandit Thakur Das Bhargava:** Sir, when the House rose for Lunch I was submitting for your consideration that the functions of a Select Committee are to go through the text of the Bill word by word; the function of a Select Committee is to go into the text of the Bill clause by clause, and if necessary, word by word. I would refer to May's parliamentary Practice.

**Mr. Deputy Speaker :** May I request the honourable Member to proceed to another point because I have already given a ruling ?

**Pandit Thakur Das Bhargava :** I respect your ruling. You were pleased to say that you are not going to reverse the ruling given by the Chair and I do not want it to be reversed. As a matter of fact I am unfortunate that I have not been able to make myself fully appreciated. The ruling of the Chair says that this Bill was with the Select Committee at the time when the draft was being considered. I do not dispute that at all. My dispute is that the functions of a Select Committee were that they should have gone through the original Bill clause by clause and word by word. It is not only this. As the House is bound so is the Select Committee bound to consider the Bill clause by

clause and word by word.

**Mr. Deputy Speaker :** We will assume that under the ruling both the original Bill and the amended draft were there and they looked into it clause by clause. What follows next? Is it the question that we ought not to go into this and it is not competent to do so? If that is so, it has already been ruled. When once it has been ruled how is it open to go into it again ?

**Pandit Thakur Das Bhargava:** On a question of fact I would still request the Members of a Select Committee, to kindly enlighten the House whether both the Bills were taken and considered together. Assuming that this is correct my contention is that unless and until every clause of the original Bill was taken, unless and until it was considered clause by clause and word by word the requirement of law and procedure is not complied with.

**Shri H. V. Kamath (C. P. and Berar: General):** Has not the question of competence of the Select Committee been disposed of by the Speaker once for all ?

**Mr. Deputy Speaker:** I am trying to meet that point myself. Whenever I find it difficult, I will ask the honourable Member Mr. Kamath to help me.

I have already said I am anxious to know what follows. I will assume for the moment that both the Bills were there and that the other draft Bill was considered clause by clause. What next ? What is the legal objection ?

**Pandit Thakur Das Bhargava :** I request you to give me two or three minutes to explain my position. There is another aspect of the case also. Besides this being a fundamental rule that the original Bill should be taken clause by clause and word by word the way in which the entire Bill is to be considered is that each clause must be considered of the original Bill, then the new clause, then the Schedule, then the new Schedule. Parliamentary Practice gives that. The next question is what is the effect. What follows—this is the question before you. I beg to call your attention in this connection to the general principles of practice and law as well as the particular point involved. In regard to the general practice the rule of law is absolutely clear that when any law or any practice or the general principle requires that a certain procedure is to be observed, unless and until that procedure is observed the thing cannot be regarded as having been validly done. For this principle I will quote another authority of the Privy Council itself which is 1936 Privy Council page 253.

**Mr. Deputy Speaker:** I am assuming the next step also. I am only taking the honourable Member's argument step by step. Let us assume it is so—that the Select Committee did not consider this or considered something else. Then the honourable Member evidently wants to say that I have no jurisdiction to go into the matter. It is with respect to that I want to say that it has already been ruled by the Speaker. I shall hear the honourable Member if he is able to satisfy me that that ruling does not cover the point he has stated. So far as I am concerned I have considered it carefully and I believe the same has been covered. I would therefore suggest to the honourable Member to proceed further without taking any more time. Already we have taken much time on this. There are other speakers also waiting to speak. I would like the honourable Member to dispose of this point as early as possible and go to any other point if he wants to.

**Pandit Thakur Das Bhargava:** My humble submission is that the previous ruling of the chair did not consider this point. The only point raised by Mr. Naziruddin Ahmad was that the motion cannot be allowed to be made as only the redraft was considered. That was the simple point. This point which I am urging in regard to taking up clause by clause was not even argued. The effect will be this that a Bill will be sent to Select Committee and if you don't observe this fundamental rule, any other Minister may, after the Bill, put a redraft, get it considered and the real purpose of this fundamental rule that it should be considered clause by clause will be defeated. This is sufficient ground that no person had a right to make any alteration whatever in the Bill—for this I would refer you. Sir, to the ruling of the Speaker in the Commons (page 301 of Hansard, Volume 215). If you agree with me in this and in the Committee being required to go through it clause by clause then the position is absolutely clear that this Bill must be recommitted to the same Select Committee. Let the Select Committee devote two hours—I do not want that the Report should not come in this session—I want them to devote two hours and consider the original Bill clause by clause, and we will consider it then. This point, I may submit was never considered by the Speaker and I beg of you kindly to consider this point.

Leaving aside this point as you have asked me not to spend any more time on it, I would take up the other points. Now the question is what is the effect of this. One point as I have already submitted is that we must abide by the rules, and the rules in a matter of this kind are fundamental rules which cannot be disobeyed. Then what is the real

effect of it? That I am submitting to you. Now the differences or discrepancies between the provisions of the original Bill and the Bill as it has emerged from the Select Committee relate not only to matters of procedure but to matters of great substance. In the Dissenting Note given by Bakshi Tek Chand and Pandit Balkrishna Sharma it has been pointed that as a matter of fact in the redrafted Bill very drastic changes were made and they have given examples of the changes. I am not satisfied that they have exhausted all the substantial changes in the minutes and I would beg of you to consider it from that point. When I began my speech I invited your attention to the fact that in this measure, as it has emerged from the Select Committee after the redrafted Bill was considered, many changes have been made which are certainly destructive of the institutions which we have not in the Punjab. I will first of all call your attention to the institution of appointment of an heir. In regard to the appointment of an heir we know the views of the Honourable Dr. Ambedkar. He himself stated that he thought that the adoption of heirs is an artificial affair. I also think so. We remember the speech made by Mrs. Hansa Mehta at the time when the Bill was sent to the Select Committee. She also made certain remarks. Now, according to the present measure, no person could adopt an heir in any form except in the *Debute* form whereas according to the original Bill the *Kritrim* and *Goda* forms were also allowable. So far as adoption is concerned adoption of a son is a mere fiction. How can such a son become a real son? But the Hindu law provides for it and I have no quarrel with those who believe in it. But in regard to appointing heirs to property, just as the Romans did by way of *Nominis Hereditio*, if the people in the Punjab had got practices like that nobody has the right to touch them. According to our institutions, in the appointment of an heir, though it is in effect just like an adoption; there is no religious efficacy, there are no particular ceremonies. There is no question of age. The son is not engrafted in the family of the adoption but he continues in his own family. There are various rules and the Punjab High Court has given hundreds of rulings over this point. That institution is too strongly fixed in the public mind and you will be tampering with the custom of at least a crore of people if you are not allowing it in this Code. According to the Hindu Code no other form of adoption will be allowed, that is the provision in the present: it does not go far enough. I understand that so far as custom is concerned, custom has been ruled out except to the extent which has been recognised.



When I read the speech of Dr. Ambedkar himself which he was pleased to deliver at the time when the Motion was referred to Select Committee, I found that his attitude was very reasonable and he made certain statements in regard to custom which are very much opposite to the provisions of the Bill. Sir, I doubt very much whether this Law Department Committee had on its personnel our Law Member himself. I do not know who those persons were who tampered with the Bill, but at the same time I can certainly say that I very strongly suspect—though I do not know it—that Dr. Ambedkar must not have been there because he is very anxious to see that the customs of the ninety per cent of the people are not affected—as I am anxious to see. Either this thing missed him—he may not have appreciated it— or some other persons might have been there who were not Members of the Select Committee. They entirely changed the face of the Bill, which they had not the right to do; then it was the other Bill which was considered—it is a fiction that the original Bill was there and considered. Sir, I would refer you to page 3652 of the proceedings (9th April 1948 ) in which Dr. Ambedkar said:

" His second comment was that the Bill had not taken into consideration the customary law. He cited some ruling of the Privy Council. I should have thought that at this hour of the day it was unnecessary to cite the authority of the Privy Council because it has been well established by a long course of decisions, that so far as the Hindus are concerned custom would override the text of the "*Smriti*". We all know this. But what are we doing ? What are we doing is this. We are shutting down the growth of new customs. We are not destroying existing customs. The existing customs we are recognising because the rules and law which are prevalent in Hindu society are the result of customs. They are born out of customs and we feel that they have now grown so sturdy that we can indeed give them flesh and life in the body politic by one legislation.

**Dr. Ambedkar was referring to the speech of Srijit Rohini Kumar Chaudhuri : He also said:**

" that we had not taken into consideration the question of the tribal people, whose life is undoubtedly governed in a large measure by customary law. If my friend had read the definition in this code as to who is a Hindu and who is not and to whom this Code applied, he would have seen that there is a clause which merely said that persons who are not Muslims, Parsis, or Christians, shall be presumed to be Hindus: not that they are Hindus. The result is that if

a tribal individual chooses to say that he is not a Hindu it would be perfectly open to him under this Code to give evidence in support of his contention that he is not a Hindu, and if that conclusion is accepted by the Court he certainly would not be obliged by anything contained in this Bill.

The position is this : if I accept my institutions as good, if I appoint my heirs according to the custom which governs me, then according to Dr. Ambedkar I am not a Hindu. That is my difficulty. Either you must provide for these one crore of people and accept their customs

**The Honourable Dr. B. R. Ambedkar** (Minister of Law) : I have no desire to interrupt my friend, but I must say that I do not accept the interpretation that he puts upon that part of my speech. It refers to quite a different matter.

**Pandit Thakur Das Bhargava** : I am very glad that I am wrong. It gives me satisfaction that Dr. Ambedkar did not want that the one crore of people should go out of the pale of the Hindu law. But all the same, the argument I was admitting was this. If this custom was good—and I claim it is good because according to the definition given in this very code, the custom is ancient, reasonable and not opposed to public policy or morality—I claim this custom should have been recognised by the Code. But this custom is not recognised. To a certain extent the *kritrima* form was adopted as a good form by the original Bill but the present Bill says that no adoption will be recognised except this kind of adoption which according to Dr. Ambedkar is governed by certain rules. What are the rules? A man must not be more than 15 years of age. He must be given by somebody in adoption. He must not have married. Even according to the present law of adoption these rules are not there. Supposing a Hindu's daughter and son-in-law have died then the daughter's son cannot be adopted; the sister's son cannot be adopted, even the nephew cannot be adopted if the parents are not there. It is common knowledge that even today this rule that if a person is married he cannot be adopted, is not in practice and according to law in vogue, it is not necessary that a person should not have married before he is adopted. Similarly about age. So, all these measures have been changed in such a way that they cannot fit in with the present conditions, or they cannot be useful to us or cannot govern us.

We passed in the Constituent Assembly that we want a Civil Code. Even if this were not the Hindu Code and if Dr. Ambedkar was charged with the duty of framing a Civil Code, (I think he will be so charged after the Constitution is passed.) he will certainly include this civil

institution—the nomination of an heir—in the Civil Code also. A man may be able to help, in their old age, those who appoint him the heir. My submission is that this point alone is sufficient to see that as a matter of fact the re-draft is much worse than the original Code and full attention was not paid to the original Bill. If full attention had been paid, this thing would have been considered. Had it been considered clause by clause, you would not have arrived at this.

**The Honourable Dr. B. R. Ambedkar :** This part of the Bill was, if I may say so, very much considered.

**Pandit Thakur Das Bhargava:** I am very glad. Sir, that the original Bill was considered. Then the only technical point remains, that it was not considered clause by clause, there is intrinsic evidence that it was not so considered. What is the effect? Supposing there are provisions omitted. How were those provisions considered? When the entire attention was on the draft of the other Bill those clauses could not have been considered. This is not a technical matter. . .

**Mr. Deputy Speaker :** The honourable Member is aware that the House is not bound by whatever the Select Committee has done. The Select Committee have sent a recommendation; it is open to the honourable Member to accept or not to accept it; if he does not accept it, he can persuade the House not to accept it. We need not go into that again. After all, some Members were there. It is not right to go into what they considered or what they did not consider, the honourable Member would do better in addressing the House as to why we ought not to accept a provision or why we should accept it.

**Pandit Thakur Das Bhargava:** I will accept your advice. Sir, I will not refer in future to what happened before the Select Committee. I will only say this point, with your permission. Even if the Select committee acquiesced in this fraud that the original Bill is not to be considered and the substitute Bill is to be considered, we are not bound. An accused, before a criminal court, acquiesces in a certain procedure which is illegal; then it does not bind him. May I quote some rulings? A Court is required to go into a question and find out for itself whether there is good evidence or record to bind an accused under section 107 Criminal Penal Code. The accused says, " I agree to be bound in that evidence ". The Court says, " You are bound ". But the appellate Court still rules that the right procedure was not observed and the acquiescence of the accused in a wrong procedure does not make the order legal.

**Mr. Deputy Speaker:** Is not the honourable Member satisfied with

tearing the report of the Select Committee in pieces ? Should he also say they are "accused" ?

**Pandit Thakur Das Bhargava** : Those who are guilty of disregard of the fundamental rules of procedure which govern a Select Committee are today accused before the House. I am sorry I have to say something which may not be wholesome to some of my friends, but I do so in all humility and with a view to safeguarding the rights and prestigious of the House. I now leave this point and come to the second point.

In regard to marriage and divorce which are very important questions, what does the Code say and what are the facts at present ? In Punjab no specific ceremonies are required for marriages which are called *Karewa* and *Chadar, Ardazi marriages*. The woman puts on the bangles supplied by the husband or the husband puts the *Chadar* on the wife and there the matter ends. (*Shri Mahavir Tyagi* : " Charming marriage ") It is very easy for Mr. Tyagi to avail himself of such a procedure. It is not a sacramental or civil marriage. Again, in the original Code there was a loophole. Such persons could come to court and get themselves registered. The changed rules is that unless the marriage is sacramental, it cannot be registered. There are other points on which I shall have occasion to speak before you, but I wish to make certain general observations in regard to what is happening in regard to many persons and what has not been considered from the point of view of the common man.

In the mofussil areas, the people are illiterate. They are poor. They do not know the intricacies of the law. On the question of divorce, when Dr. Ambedkar said that he was speaking for ninety per cent. of the population, I know that he was saying nothing but the truth. In regard to this ninety per cent. How does the divorce take place today ? They go to a petition writer and get a letter of release. Another way is they congregate together and put a white sheet on the woman.

**The Honourable Dr. B. R. Ambedkar** : And supply a good deal of liquor to the fellows assembled !

**Pandit Thakur Das Bhargava** : That may be so, but it is not part of the ceremony. What is the present law. Sir ? What have our leaders done for you ? I am a representative of those poor people. I include myself in them. But when Dr. Ambedkar just by his finger indicates that he is one of those he will excuse me if I do not agree. Dr. Ambedkar lives here in a paradise.

**The Honourable Dr. B. R. Ambedkar** : I have lived in

Improvement Trust chawls for several years who charged me rupees three as rent.

**Pandit Thakur Das Bhargava** : You can crush them under your feet: you can crush them under your thumb, but Sir, do you think that any poor villager getting about Re. 1 or Rs. 1/8/- a day could go to a district judge without the help of a lawyer ? Dr. Ambedkar is a lawyer. He wants that this world may be peopled by lawyers alone like me and by nobody else. What would happen to these people ? Will they go to a district judge for dissolution of marriage or divorce ? (*An honourable Member*, " Impossible ") And this is not sufficient. Even if he obtains a decree, it should be confirmed by a High Court, which so far as Punjab is concerned, to the High Court at Simla. Now, this procedure is unknown to people. It is a great tyranny upon those people. You are legislating for those who live in the Marine Drive in Bombay or in the palaces of Calcutta and Delhi and not for these poor people for whom you have such a soft corner in your heart.

**Shri L. Krishnaswami Bharati**: He wants to make it difficult. Do you want to make it easy ?

**Pandit Thakur Das Bhargava** : Another answer is that they want to make it difficult. I do not want to make divorce easy. Absolutely not. I am in favour of divorce on one condition only, that you enact laws in which it may be very difficult to bring about conditions in which divorce may take place. Chastity and continuity of family life are the very pivot of our culture. But if I agree to divorce, it is because I see so many deserted women. It is on account of that I agree. How can a poor man who is absolutely illiterate be able to engage a lawyer and go to a district or high court ? It is impossible to accept this. This old Act of 1869 was enacted, not for the poor people of the Punjab or any other part of India, it was enacted for Christians who were of the same caste as the then rulers. There is a world of difference between them and these people. If you go through the provisions from article 38 to 50 of the Bill, you will come to the conclusion that such a complicated and intricate procedure has been laid down that it is very difficult to follow it. If you think deeply, you will find that the whole Hindu society will rebel against you if you pass those provisions. According to your law, if a man marries his aunt's (father's sister) daughter, that marriage is good ; if he marries the daughter of his maternal uncle—it is in vogue in certain parts of Bombay, I understand..... (*An honourable Member*: " And Madras. "). But so far as we are concerned it is regarded as highly incestuous. There is a very great difference. (*Shri Mahavir Tyagi*: " The

man may be killed.") Mr Tyagi is not very far being correct. It is a fact that in all the villages of East Punjab—and I speak with such feeling not because I want to speak with force but I regard it as true if you allow this thing to be done, that man shall be killed and nobody will associate with him. (*Mr. Tajamal Husain*: " Is there any compulsion ?"). If a man marries his sister or mother, is there any compulsion ? Is this an enabling measure ? This is going into the very vitals of the society. It is intolerable. It is impressible for us to be reconciled to this situation simply because in regard to some people there is such a custom. I do not say that those people should not be protected, but for them provision can be made.

**Shri L. Krishnaswami Bharati** : Exactly that has been provided if you refer to clause 7(5)—the parties should not be sapindas of each other.

**Pandit Thakur Das Bhargava**: May I humbly enquire if a daughter of the aunt can be married to a man ? I have seen the rules. I submit for your consideration that in these matters the law has been changed, and unless the law is brought to suit our conditions it is difficult for us to support this measure. That can be done. In the Select Committee amendments can be moved. I do not want that the Bill should be throttled or killed:

**The Honourable Dr. B. R. Ambedkar**: It can also be done by an amendment in this House.

**An Honourable Member**: I hope you will accept.

**The Honourable Dr. B. R. Ambedkar**: I shall be prepared to accept any reasonable amendment.

**Pandit Thakur Das Bhargava** : I am very glad, and to that extent I am agreeable to support this Bill.

**Mr. Tajamal Husain**: Does the honourable Member intend to finish today ?

**Mr. Deputy Speaker**: The honourable Member seems to be interested in this than other person, who are affected by this Bill. I have been noticing it. I cannot ask the honourable Member when he proposes to finish. It is open to him to take a reasonable time without repetition.

**Pandit Thakur Das Bhargava** : It is not my intention to take one more minute than is necessary. If I am repeating, I may be called to order. If a Bill is there which affects the lives of thirty crores of people, it is not too much to consider it for several days.

Now I come to the provisions made by the Select Committee and to

the most crucial questions in this matter. They are, whether in regard to succession and maintenance, what should be our attitude. I fell strongly on these. As I submitted in my earlier observation, I am in favour of giving to the women of India rights over property, moveable as well as immoveable, so that they may be economically independent. But, at the same time, I am opposed to giving the daughter a share in the property of the father.

3 P. M

I want that, so far as an unmarried daughter is concerned, she may be given full share like the son as long as she does not marry. But as soon as she is married the position becomes different. I see that there is a lacunae in our law, but it may be met by enacting that, as a woman marries a man, then the man and woman, when they are united in love, they may be united in property. Ultimately the man and woman may be joint owners and, when the father of the husband dies, both of them may succeed equally. Further on, the devolution of the property may take place in a particular way. I know that perhaps the demand for equality may not be fully met thereby. But in a matter of this kind, I do not think our sisters are well advised in weighing every question in golden scales. The yard-stick employed by them is not correct.

May I submit that, in regard to maintenance, they have such laws and such provisions the equal of which is not to be found anywhere else. Sir, the question of succession and the question of maintenance must be considered together. If they are not considered together, the difficulty will be that the full implications of the provisions will not be realised. Now, in regard to maintenance the duties of a husband or a man are quite different from the duties laid upon women. According to the Chapter on Maintenance, the wife has a right to be maintained by the husband, but has the husband a right to be maintained by the wife ? I am only saying that the rights are not equal. I maintain that the rights cannot be equal. They are diverse. Ladies and men have to do different work in life and on this basis it should be so arranged that the woman gets her full right and not an absolutely equal right.

Then again. Sir, a father has a right to maintain a minor son ; but, so far as the daughter is concerned, what are the rights of a daughter. Sir ? If a daughter is widowed or is married or unmarried, in every case and whatever the age of the daughter, her maintenance is absolute obligation. As a matter of fact so far as the provisions for maintenance are concerned, I certainly want to congratulate Dr. Ambedkar for

proposing that the ladies should be protected in every way and that they should be well provided for. But while this useful provision is there, there is also the other thing that the ladies should get a share in the father's property.

The Honourable Dr. Ambedkar told us yesterday that in times of old there was simultaneous devolution of property and that the daughter got about one-fourth according to Narad. I do not know what was the basis of social existence in those days and whether the family was then constituted as it is today. I do not know whether this point has been dealt with in some texts of Hindu Law. That is not an accepted proposition. Some say that this provision of simultaneous heirship refers only to unmarried woman. But, leaving that aside, I submit that, if in these times it was considered right, the question of questions is whether today, as we are situated after having observed the theory of Agnacy for a thousand years or more, are we justified in accepting the proposition that the daughter should get a share? What happens in a family? As long as the father is alive, the sons work with him in his business or in the field and they combine together to produce wealth. When the father dies of old age, that property which goes in the father's name is thus the result of the joint efforts of the sons and the father. Now, to say that the daughter should get a share of such a property which she had no share in producing—perhaps she was in some other place producing children, is not fair. Let me not be misunderstood. I do not want that the daughter should not be given full rights. She may have them. But I do not want that this innovation, which is of such a fundamental character that it will affect every home in our country, should be made. I know my people all right. Choudhari Ranbir Singh who is a Jat knows how his son-in-law will be received in the family. I have been a practising lawyer for forty years and I know that in the case of self-acquired property, the daughter gets a share when there are no sons. If this innovation is introduced in the villages, in regard to entire property the result will be endless trouble. In every home if you let the son-in-law and the father and the mother of the son-in-law to live together with aunt's son and his family, it will create an impossible situation. This is not because we do not love our daughters. We do everything for them. In our place, if a daughter comes home to her parents, something is always given to her by way of love.

**Shrimati Renuka Ray:** Daughters should not be born in this country.

**Pandit Thakur Das Bhargava:** To that I know What Dr. Ambedkar



will say. He will say, ' Instead of son, daughters should be born. Do we not know that among many Rajputs, the daughters were killed ? I do not want that to be done. It is unnecessarily wrong. What I am submitting is that for hundreds of years we have lived in such a society. We have regarded the son as the very pivot of the family. Without a son the daughter does not count in the family. It is the son which protects a man from hell. ( ) If we were like the Muslims, we would certainly accept it, but it is very difficult. This interruption by Renuka Ray only brings into relief my argument that so far as the conceptions of the people are concerned and their mental outlooks are concerned, such an innovation would spell nothing but disaster. This is my humble submission and Mrs. Renuka Ray only supports me in this.

**Mr. Krishnaswami Bharati:** I do not know which part of the country he comes from, but it appears that he does not know the custom in the Punjab. In no other province I can say the conditions are the same. What are these conditions due to ? They are due to the fact that for thousands of years, our policy and our theory and our conception about the family has been exactly what has been in the Punjab. Sons-in-law are not all bad. Sons are not equally bad.

**Shri Mahavir Tyagi (U.P.: General):** It is the brother-in-law which matters.

**Pandit Thakur Das Bhargava:** There is a proverb which runs as follows:

*(Translation of Urdu proverb)*

(The following are the efficient causes of strife:

- (1) Construction of house in the place meant for deposit of village refuse; (2) A field in the vicinity of village common ; and (3) The habitament of son-in-law in the village.) Another proverb.

*(Translation of Urdu proverb)*

(The yama, the son-in-law, the maternal nephew, chowkidar and the goldsmith can never be yours. You may try them if you please.) This is the truth. Let me say : Ask any person to go to the Punjab and find out among the Sikhs and Jats.

So far as this Bill is concerned, when this Bill was introduced, I remember that in the Objects and Reasons, this thing appeared:

" The Bill aims at providing uniformity in all branches of Hindu law for all provinces and for all sections. The old complex, intricate and different provisions of Hindu Law have also been simplified. Most of the provisions in the Bill are of a permissive or enabling character and impose no sort of compulsion or obligation whatever on the orthodox

section of the community. Their only effect is to give a growing body of Hindus, men and women, the liberty to lead the life which they wish to lead without in any way affecting or infringing the similar liberty of those who prefer to adhere to the old ways."

Now, Sir, in *this* very spirit. Dr. Ambedkar spoke yesterday. We want to see both the sections, the enlightened and the non-enlightened are accommodated. My humble submission to him is that so far as that is concerned, he is right; but for those humble people, whom you will neither regard as enlightened nor non-enlightened on the path of social life, you have not given the right provisions in the Bill and my humble request to Dr. Ambedkar is : Let him also kindly allow them to live on this earth.

Now, Sir, the very essence of a codification is that it includes certain enabling measures to accommodate the progressive and recognises customs which have grown in spite of texts to the contrary. It was never intended that established rights and provisions of law should be changed in this ruthless manner, which will create bad blood in the whole of the society. All our customs and all our cherished institutions are being crushed by this Bill.

When I come to the other provisions, as regards the succession, the position will be still more astounding. Now, Sir, so far as the Mitakshara is concerned, we know the consanguinity is the basis and so far as the Dayabhag law is concerned, religious efficacy is the basis of inheritance. Dr. Ambedkar has been kind enough to give us another basis of inheritance. I do not want to say that he is far from wrong in what he is doing. He is doing the right thing, but I do not know what is the barometer for weighing this natural love and affection. Love and affection may also be perhaps understood. What is natural love I do not know. According to our conceptions, the brother is very dear to us. In our sacred Ramayan, in Lakshman, brotherhood is enshrined. Sir, ' Uncles ' who are just like parents are very dear to us. But what is the position of ' uncles and brothers ' in Hindu Code. If I were to tell you how that position has been affected, where they have been relegated, where they have been put, in the list of heirs you will simply be astounded. If you kindly see the Seventh Schedule which has been sought to be made applicable to a Hindu in regard to inheritance, you will find that the first clause includes seven kinds of people and I want to know. Sir, how this new principle of natural love and affection is affected by this provision. In the first place Son ; widow; daughter: this I can understand very well. Then you find ' son of a predeceased son ':

Even there I will allow it. Then comes \* widow of a predeceased son '. Sir, I do not understand how under the law of natural love and affection she is preferred to a daughter, son or an uncle. I do not think that so far as the question of natural affection is concerned, the widow of a predeceased son, or son of a predeceased son of a predeceased son can be accepted. My opinion is that the Bill is based on a wrong standpoint if it provides for them. I can understand if this is only for providing for ladies, if they were not provided elsewhere. If they wanted not a widow, but the wife of a predeceased son or the wife of a son, I can understand it.

**The Honourable Dr. B. R. Ambedkar :** This is by statute. If my honourable friend will read the Women's Property Act, 1937, he will understand why these people have been put in the category simultaneously.

**Pandit Thakur Das Bhargava:** The friend of Dr. Ambedkar knows it quite very well. But in that 1937 Act when that provision was made, the ' daughter ' was not included.

**The Honourable Dr. B. R. Ambedkar:** I have said so.

**Pandit Thakur Das Bhargava:** You want to add this to enable the daughter to succeed a father and succeed the father-in-law too. This is absolutely unfair. I do not see why you do not provide for this when you are making a new Code. You were making laws in which all claims should have been satisfactorily met. How should you have put in these provisions, because the Act of 1937 was there. I do not think this committee was justified in doing this. They ought to have given a full code in which every claim was satisfied. You cannot justify it otherwise. Therefore, you took protection under that Act. That is the position. Sir.

When I come to clause 2 of the original bill the ' mother ' was considered as the better heir, because the ' mother ' was a class by itself and the mother succeeded alone. Here I can understand natural love. Now the father has been placed along with the mother and they both come together. But if you proceed further what I maintain will be better understood. When you come to the second case, you find son's daughter, daughter's daughter. The son's daughter has got a special place in Mitakshara law and according to Mitakshara, she is one of the favourite heirs. What happens now. Sir, is that in the original Bill in the first class, the daughter's son preceded mother and father. Now the daughter's son is sent on to the bottom. Then if you proceed further. Sir, in class IV, the brother and the sister come. And in class V, brother's son, sister's son, brother's daughter all come in. I can only

state that a brother's son is made equivalent to a sister's son and a sister's daughter. Now, this is equality run mad, I should say. In our families, we know what is a brother and a brother's son. This is the result of the system or the institution of a family as we have been observing for the last 1000 years. We cannot get away from this violent conflict. You are introducing provisions in this Bill which will make every person rebel against you, because these innovations in practices cannot be made by order. According to the provisions of this Bill, every Hindu, male and female has got an absolute right of making a will and every male and female in future will be absolute masters of this inheritance. You have given in my hand a power to the detriment of the ladies and I do not want that it should be used to the detriment of the ladies. After all, a father when dying will be within the power of the sons and the sons will see that the father disinherits the daughters by will. While I am saying this, I may tell you, I have a daughter and I have provided for her when I provided for my sons. In the house in which I have been living with my sons and in the house in which my sons' wives have been living, I do not want that the daughter and her husband, her father-in-law and mother-in-law, her elder-brother-in-law should all come and occupy some rooms. That would be an impossible proposition.

**Mr. Deputy Speaker:** Under the Bill there is not much chance of the father-in-law and mother-in-law being protected.

**Pandit Thakur Das Bhargava :** They can come with the son-in-law. I will show there is a very good chance of a thing like this taking place. The father who does not want to touch even water at the house of the daughter, will get the property of the daughter, and her husband. I am coming to that subsequently.

I am only submitting that the ladies will be under a greater jeopardy of losing their rights in this way. The father will disinherit the daughter. She is not a heir according to class I; she does not succeed to the property of the father-in-law as wife of the son; but she succeeds only as a widow. Where is she then ? I do not understand. She will be put to a great loss. I want, Sir, that the women should get their full rights. The theory which I have propounded.—I have not given very great thought to it—I have only submitted it for the consideration of the entire House and for the consideration of Dr. Ambedkar—I do not know how it will affect other interests—there may be flaws and I do not vouch for it—but I consider, at the same time, that it will be a better arrangement than the present arrangement. The theory is that an unmarried

daughter succeeds simultaneously equally with the son. The woman on marriage becomes joint owner in husband's property as husband would be joint owner in her property, then both succeed in husband's family.

Then, again. Sir, what would happen to the brother's son ? and the sister's son? They are both on the same level. The brother's son lives in the same house probably or next door and does service everyday ; the sister's son lives at Allahabad or Madras or some other place. How will they be equal. In regard to other provisions also.— I want to be brief.—If the House wishes me to go into the other provisions also, I am perfectly prepared and I have got full notes about the changes and how they affect us—but I would be taking up the time of the House in such a manner as to deprive the other members of their opportunity.

**Honourable Members:** You may go on.

**Pandit Thakur Das Bhargava:** There are many other considerations which go to show that this provision in clause (2) is not well founded either from the point of view of consanguinity or religious efficacy and even from the point of view of natural affection and love.

Next, I come to the succession of the female. After the Hindu Code Bill comes into vogue, the lady succeeds to the property of the father as well as to the property of the husband. Suppose the lady dies leaving husband and children, it is clear that the husband has been given the right and the children also succeed. So far so good. Then, when the husband and the children are not there, who succeeds ? The father and mother of the lady. These people— there are lakhs like them— who do not even want to touch water from the house of the daughter, will get the property. (*Shri L. Krishnaswami Bharati.*" Why " You cannot understand this; it is my difficulty. You cannot realise this. May I submit. Sir, that as soon as the father gives away the daughter to the son-in-law, the father never goes to the house of the daughter, never takes his food in her house and never even drinks water in her house, so that the purity is maintained that no daughter may be given in marriage for mere consideration or any other material gain. That is the basis. There are many people who would not even go to the village where the daughter is married. We must recognise facts as they are; it is no use saying that they do not know. It is quite possible that they do not know. It will happen that the father-in-law would get property bequeathed by the lady. That will be an intolerable position. Supposing a lady does not leave a husband and children and neither a father nor a mother, what happens ? This is a crucial point. The property has

been inherited by the lady from the father. The property, in the absence of husband, children, father or mother will not go to the son of her father. Let me put position clearly. The property belongs to A's family. The property will not go to A's family, the brother of the woman, the real brother made of the same flesh and blood, but the property will go to hundreds of people of the husband's family of the list that you have given here. Since the woman is dead, leaving no husband and children, father and mother, in that case, the property is not inherited by her brother or brother's son or others, but it goes to the family of the husband. Why is it so. Because your Select (committee have not been able to shake themselves from the considerations which have been influencing the entire community for a very long time. (*Shri L Krishnaswami Bharati*: " What is the present position ? ") We are not concerned with that. You know the present position very well. It is *stridhana* ; it is not inherited by the daughter; the position is different. I was submitting, the property of one family is not inherited by the brother of the lady, but it goes to other people. This is a position which I cannot understand. But, you must realise that this is the position. You may remedy it ; I beg of you to remedy it. This is a question on which you will be well advised to review. This is one of the points which I submit for your consideration. I will leave this question of succession at this ; there are many other considerations which could be placed before you.

Then, I come to the power of disposal. I quite understand the very great hardships when there were restricted rights in regard to women's property. So far as the joint family is concerned, it is sought to be crushed under this Bill. The joint family is mouldering away; it is crumbling. From a very long time, certain circumstances have so arranged the fate of the joint Hindu family that it cannot survive. Sir, I do not want to shed tears over its going away. The Income-tax Act is the greatest monster in killing this joint Hindu family. I know that the joint Hindu family cannot stay *for* long. But, so far as this Bill is concerned, if it says that in future they will be tenants in common. I have no quarrel. This was given in the other Bill and this is also given in this Bill. I am too much of a realist to cry that my sacred ancient joint Hindu family goes away. There were days when there was great use for the joint family. Now we are turning back to cooperative forming, co-operative holding of properties, etc. At the same time, we are providing social insurance, etc. We are doing all these things in such a manner that we are reverting back to the principles on which the old joint Hindu family was doing. That is beside the mark; so far as the law goes, so far as the general circumstances of the Country go, so far as this joint family is concerned., I do not think that it must be said.....

**The Honourable Shri Jagjivan Ram** (Minister of Labour) : It is a lost cause.

**Pandit Thakur Das Bhargava** : Whatever you may say. Sir, there is no question of cause here. I do not like the idea that legislation should kill the joint Hindu family.

In regard to marriage. Sir, I have to submit a few considerations more. It is a very difficult matter.

**An Honourable Member**: That has been dealt with before.

**Pandit Thakur Das Bhargava** : I have placed some considerations before.

**An Honourable Member**: This is second marriage.

**Pandit Thakur Das Bhargava**: I find myself in very good company when I make .....

**The Honourable Shri Jagjivan Ram**: You are with the Law Minister himself.

**Pandit Thakur Das Bhargava** : Shrimati Ammu Swaminadhan, Mr. Shiva Rao and Shrimati Renuka Ray wrote as follows:

" Regarding clause 6 of Part II of the Code on ' Forms of Hindu Marriage we would point out that there are, in certain parts of the country, long-standing customs or usages which recognise as valid marriages which would not come under the category of either sacramental or civil marriages in accordance with the provisions of this Part. We would therefore suggest a proviso at the end of clause 6 to confer validity on such marriages. "

What is this ? I understand that the trouble is the same in that part of India from which Mr. Bharati comes.

**Shri L. Krishnaswami Bharati** : Luckily I do not come from that part. I come from Tamilnad and they come from Malabar.

**Pandit Thakur Das Bhargava** : So far as the question of adoption is concerned I find a similar thing in this dissenting note. So it is not the Punjab alone. It is also in other parts in which the rules of marriage and divorce and adoption are different from the orthodox rules and all of them should be protected, and I am very glad that these dissenting members represented their constituencies too well in making the observation.

I was speaking of sacramental marriages. So far as the nonsacramental marriage is concerned I have not said a word about it. I want that to be protected. In regard to sacramental marriages, the havoc played by the Committee is inexplicable. I do not understand for

once how the civil marriage should be included in this chapter. If it is a civil marriage, it is a subject for the civil code. We have the Act of 1872. It is a very defective Act and I have submitted a Bill to put it right, and the Bill which I moved a few days back in this House for validating the marriage of all others, that would protect us much more than the inclusion of this civil code here. I am in favour of a civil code for the whole of India and I want the rules to be the same for all. It is our duty to do so but why should we include the civil marriage here ? If it is to take away the evil effects of that law, then the other course is open. What happens in this civil code and the new kind of marriage which is neither sacramental nor civil but a registered sacramental marriage in which though the marriage takes place by virtue of sacrament, yet if it is originally incestuous, then you go to a registering officer and you get it validated ?

**Shrimati G. Durgabai :** It is only optional !

**Pandit Thakur Das Bhargava :** I have replied, it may be optional but does it conclude the matter ? The Hindu Code says that there are five conditions when the marriage takes place otherwise the marriage will not be permitted. The words are " conditions relating to sacramental marriage ". That means in fundamental matters, as soon as one of the provisions is contravened, you allow the law to secure you to get away from the effects of that flaw. As regards the prohibition of the sapinda relationship, I beg to submit the difficulty is that the uniformity of law which we aim at is very difficult to secure in a country like India. It has been said that bringing about such a uniformity will be miraculous. I congratulate Dr. Ambedkar in working out that miracle and I am for this miracle being worked out. But when there are legal difficulties in local matters in which the conflict from the present position to the position that we want to see enacted is very great and very violent. I would ask of the House to so arrange matters that this conflict is avoided.

Now, Sir, I come from a place in the Punjab where there are villages upon villages having the same gotra and they believe that they are descended from the same common ancestor. You know this sapinda relationship which restricts the line of ascent and descent to three or five is not sufficient so far as those people are concerned. I do not want to say that you broaden it further. At the same time this will be unacceptable and a thing with which we could never reconcile ourselves, if you ask us to allow a marriage of sapindas. This is an impossible position so far as we are concerned, and if you allow this



then you are really cutting at the very root of our social system as is enjoyed in the Punjab for a very long time. This is my feeling also for the whole of India. Of course, I do not speak for the rest of India because there are certain gentlemen who question it. My view is that in the whole of India the position should be the same. Well, I am not dogmatic about it, but this is a very wrong rule that we are enacting and that the requirements of section 7, that marrying couple should not be sapindas should be waived in so far as registered sacramental marriages are concerned. So far as the Sarda Act went, a marriage once celebrated according to the Hindu Law and our notions, was always indissoluble. We are making a break from this rule in so far as we are providing for disrupting marriage by codes or customs. Otherwise when rule 3 has been abrogated, you can convict a man and send him to jail. I have submitted to the House through a Bill that where a person not of proper age is married, instead of a fine he should be imprisoned and the law should not be vested with the discretion that he should be allowed to go free. The whole country was against the Sarda Act and the present provision shows that if Rule 3 is followed, then the marriage will become avoidable. This is going against principles which we have not accepted for more than 20 years.

So far as the main provisions in the Hindu Code are concerned, I have dealt with them in brief with a view to bring them to the notice of the House and since my feeling is that the Bill is not to going to be throttled out, I will deal with those matters when the clause to clause stage is reached.

To sum up, I want to say that so far as this House is concerned, it will be well advised in either sending this Bill out for circulation,

because in that case nothing will be lost—as a matter of fact much will be gained: public opinion will be consulted and the public will feel that they are being ignored. As a matter of fact many amendments have been made even after it has come from the Select Committee: even before the Select Committee the people in general did not know anything about it. In spite of all that has been said, I am convinced that people know about it. Dr. Ambedkar referred us to the two gentlemen who drafted this report and said that they were very good people and not such people as could be regarded as very much advanced in their views. I have got with me so many opinions of high court judges and more opinions are pouring in every day. All these people are against it. I did not want to read them out from the evidence that is printed in the report of the Hindu Law Committee. I would with your permission refer

you to page 13 of this report, where there is the evidence of a lady. Miss Subrul, Principal, Fateh Chand College for Women. She said:

" The unmarried daughter, one who is not fit for marriage, or one who has made up her mind not to marry should get the same share as the son and she should also be subject to the same obligations as the son. A married daughter should not have any share in the property. If an unmarried daughter marries, her share should go back to her brothers."

When the Committee was in Lahore to record the evidence, it is said in the report.

" As a matter of fact in the Punjab where I was presiding over the meeting of this committee some 500 women entered the Commercial Museum Hall, Lahore, where the meeting was held said with folded hands ' Do not bring son-in-law into the family and ruin our business."

In regard to business if you kindly consider what effect this will have on the business people you will simply be scandalised. A prosperous business conducted by a father and his sons is going on. The father dies and the business is run by the joint efforts of all and then the son-in-law gets in. What will happen to the business ? It will go to dogs. I would refer the House to page 139 of the report. It is wrong to say that all the ladies are in favour. Thousands of enlightened ladies did not favour this, not because they did not want the daughter to be given any rights. I reiterate that so far as I am concerned as also those persons who think in the same way as myself, we do not want to see that the daughter is not given the full right or that women are not given their full right. We want women to rise to the same stature as man and to have the same rights. I am one with Dr. Ambedkar. I am like him a progressive conservative. I like that expression very much. I do not belong to the advanced school of thought. This Bill is not either revolutionary or radical, as Dr. Ambedkar said. This Bill deals with certain matters but the Bill has to be improved. Today there is in the Hindu society some sort of introspection and it is able to see that there has been decay. It is our duty to see that the dilapidation is repaired in the words of Dr. Ambedkar. I therefore submit that from this point of view let no body run away with the thought that we do not want to do justice to our sisters and daughters. If our sisters and daughters carry an impression like this they are entirely mistaken. I know about your good self. Sir. You are also in favour of the view that their rights should be secured. I therefore submit that this should not be looked at from

this point of view. I want this Bill to be circulated and it may be taken up after the next elections when we have a more representative House. I do not maintain that this House is not fully competent or sovereign. If the House persists in proceeding with this measure there is no wrong in it but I would like to see that this Bill is considered and that justice is done to every interest concerned. At the same time what I do want as a lawyer and as a member of this House is that this Bill should be considered again by the Select Committee, even if it be for two hours, so as to remove all these defects and to legalise the original Bill being considered clause by clause and then this very Bill may be substituted if the Select Committee so pleases. I maintain that it is absolutely wrong to say that the original Bill was considered in the way in which the law required it to be considered or that the amendments were moved or accepted in the usual manner as is done in every Select Committee. This was not done. We should be quite cautious that we do not allow the thing to be done in a way which is fundamentally wrong. I would beg of Dr. Ambedkar to consider the question if he is satisfied that my objection is right. I would beg of him kindly to consider the point of view of the poor Punjab people who had no representation on the Hindu Law Committee.

**Honourable Members:** What about Dr. Bakshi Tek Chand ?

Pandit Thakur Das Bhargava : If you speak of Dr. Tek Chand who was on this Select Committee I will be very glad if you will give his due. If he had not written this dissenting note where would you have been ? If you accept him as a man whose views ought to be respected then go by his views. This is my submission. I am only a mouthpiece or a loudspeaker of what Dr. Bakshi Tek Chand has written. He has said in his note that you should allow nomination of an heir, that you allow divorce to take place in the same manner in which it is taking place today and he has also mentioned about non-sacramental marriages. In all these points when you take his name I beg of you kindly to follow him in what he has said in his dissenting note. .

Mr. Deputy Speaker: Shrimati Renuka Ray. Mr. Naziruddin Ahmad: Sir, my grievance is not being heard. Mr. Deputy Speaker: The honourable Member's grievance will not go unheard.

Mr. Naziruddin Ahmad : May I submit that I had certain points and I would like to have got the advantage of those points being made and the replies given to them.

**Mr. Deputy Speaker:** The honourable Member will have the advantage of his observations going unchallenged. Mr. **Naziruddin**

**Ahmad:** I do not like it. Sir. Mr. **Deputy Speaker:** I have already ruled that the honourable Member will not have his turn now. I have called Shrimati Renuka Ray.

Shrimati **Renuka Ray** : The Bill that is under the consideration of this House now, or rather the principles embodied in it, have been on the anvil of this legislature since 1943 and the insistent demands for these changes that are embodied in this Bill have been before the country for a very much longer time. It was more than 100 years ago that Raja Ram Mohan Roy wrote a treatise called " The Rights of Females to inherit property and their rights of marriage ", and this matter was first brought to public attention. Since 1931 and 1932 there has been an insistent demand throughout the country, and at that time the need for the removal of legal disabilities of women and the need for a uniform and comprehensive code of legislation was made manifest in this country. Due to the fact that on the anvil of the legislature there were a number of Bills dealing with this subject, due to the fact that piecemeal legislation was leading to anomalies in law and because of this insistent demand, the Government of that day was forced and compelled to appoint the Hindu Law Committee better known as the Rau Committee on Hindu Law. It was as a result of the report of this Committee that the two Bills on intestate succession and marriage were introduced in 1943. At that time the opposition that has now again reared its head also came to the forefront. The substance of the opposition was the same as it is now but the approach was a very different one. The approach was naturally different because it was made to an alien government. The approach was made on the lines that they were the loyalists who were the ardent supporters of the Government, that it was the Congress, which was agitating, that was behind this demand which the women of India had brought forward and that the Government should not give any credence to it. I am not making statements without foundation. It is true that the nationalist press of this country did not give that opposition much chance. Yet the opposition did bring out many pamphlets wildly abusing our national leaders, not even sparing our beloved leader Mahatma Gandhi. There was a weekly paper produced called ' Hindu ' in which these Bills were attacked and they were attacked on the basis that the national leaders of this country were behind it and it was due to their advice and under their influence that this was being done. Coupled with this factor, when the Government found that the women of this country were not willing to agree to those machinations which wanted to further divide and

bring discord among them, when they realized that women were against separate electorates and that they stood behind those who were in the vanguard of the freedom movement of this country, then there was not much hope that a legislation of this type to improve the lot of women and to give them their rights would go through with the alien Government in power. It was then that we realized that it was necessary to wait till a national Government came in. Later the Government appointed the Hindu Law Committee, and the Bills were re-circulated. This Committee as the House knows, presented its Report after touring the country, taking the opinions of thousands of individuals and organisations in 1946 after the Interim Government came in. I will not recapitulate the subsequent steps when this Bill was reintroduced after 1947 in the present Legislature as these are well known to the Members of this House. But I merely want to point out that the opposition which is in substance the same, in character the same, has a new approach. I would like to know who are they who were opposed to the Congress in those days to say today to the Congress ' You will lose your elections if the Hindu Code Bill goes through.' I would like to ask them when they were deliberately against the movement for freedom—when they neither supported it nor sympathised with it—when it was in spite of them that the Congress won the elections and the country's freedom, who are they today to tell the Congress that they will not win the elections. If anyone of them comes into the legislatures of the country today it is by the grace of the Congress and so it shall be tomorrow also.

This opposition that has reared its head and which is similar in character as before, has resorted to many devices. It has resorted to various types of tactics. The House is aware of the fact that the Governor-General's name was used and this was found to be a fraud. Only two or three days ago in a newspaper in Calcutta I saw the name of Shyama Prasad Mookerjee after that of two or three other well-known oppositionists and I was a bit surprised until I saw in small brackets the words " (of Uttarapara) ". Sir, it was obviously intended to mislead, and if questioned they would have pointed out " of Uttarparah." These are the devices, these are the tactics that are being used by the opposition. As you know, we do not question those who have genuine differences of opinion. But this type of tactics that are employed today.....

Mr. Naziruddin Ahmad: On a point of information, is it not Dr. Syama Prasad Mookherjee?

**Shrimati Renuka Ray :** No. It was not the Minister of the Central Cabinet. I do not know which Shyama Prasad Mookherjee he is.

Mr. Naziruddin Ahmad: I thought the description was " Dr. Shyama Prasad Mookherjee, President of the Hindu Mahasabha ".

**Shrimati Renuka Ray :** That is not so. It was " of Uttarapara". Such are the tactics adopted by them that even Mr. Naziruddin Ahmad is taken in by them. The orthodox opposition has found its greatest champion from amongst the members of a community which recognises the daughter's rights of inheritance. It is extremely surprising that the honourable Mr. Naziruddin Ahmad would deny to his Hindu sisters the rights that his own women have.

I would further say that there are some people who have asked " How is it that telegrams, circulars, and posters are being displayed by the opposition all over—at least in Delhi—and that M.C.A's are being flooded with wires ; and how is it that those who are in support of the measure do not do the same ? " Sir, those who support this Code are also representatives of social welfare organisations; they are people who work for the good of this country. Today when there is a national emergency in regard to any funds that they have, they would not consider it right and proper that they should use such funds in sending wires and letters when they can be used for the rehabilitation of refugees. One wire to M.C.A's in this House costs Rs. 165. With that money for three months a refugee woman can be given vocational training for rehabilitation. Do you want that these wires should be sent to you ? I think it would be wholly wrong for such a procedure to be adopted. If we have not issued posters and circulars and wires it does not mean that the demand for the changes does not continue to exist.

I will not go into great detail on the provisions of the bill after the brilliant and masterly analysis of the Honourable Law Minister. It is quite unnecessary. Unity is something we desire in this country, and a uniform and comprehensive Code of law for Hindus who are the majority in the country is surely a necessity in that case.

Turning to monogamy I would like to ask, is there any one in this House or in the country who would contemplate with equanimity the fate for his own sister or his own daughter of being the first wife of a man who has married again. It is true that polygamy is not very customary : It is on the whole rare in the country. But in recent years we have seen that polygamy has become more frequent, and to the eternal shame of Indian womanhood. There have been women who have knowingly and willingly agreed to become the second wives of

such men. I do not think that I need elaborate the point that law must come forward to redress the grievances and the miserable plight of the women who are first wives of such men.

Turning to inter-caste marriage and *sagotra* marriage, when in the Fundamental Rights of our Constitution we say that all discrimination on account of caste and sex and other such things should go, surely inter-caste marriage which is a permissible measure will be only the very first step towards it.

Mr.. Deputy Speaker: Caste can go; how can sex go ?

Shrimati Renuka Ray : I said ' discrimination on account of caste and sex '

Mr. **Deputy Speaker:** The honourable Member may go on.

Shrimati Renuka Ray : Turning to the divorce provision in this Code, I concede that these are restricted conditions. The home is the nucleus of society and I do believe that the primary reason for marriage is that it is for the protection of children and as such divorces should not be allowed on flimsy grounds, but for genuine cases of hardship we have to provide. Since 1943, when the Marriage Bill was first introduced, I have had scores of letters and scores of people have come to me with their daughters who have shown to me how grave and how terrible is the hardship which the women do suffer. Unless there is such a provision, both for men and women, it will not meet genuine requirements.

Sir, let me dilate for a moment when I speak on this point, because the opposition about which I spoke have been going round telling many women who do not understand law or the provisions of a Code, that their own women were trying to bring in laws by which they will be divorced. They do not realise that it is only a permissive measure, that it is only the aggrieved person who can claim divorce, and for whom alimony is provided. These things are not mentioned. At hundreds of public meetings these matters were brought to me 4 P.M. and I had to explain the point, and I think the women

Members of this Assembly can also say the same thing. Turning to the joint Mitakshara family, I do not think there is any need for me to add one word to what the honourable the Law Minister has said on the subject. It has been fully amplified by him.

So far as the daughter's right of inheritance is concerned, it is the focus of the opposition. It is only natural because that alone proves that it is not bigotry so much, not blind prejudice so much, but it is the vested interests that are up in arms. The honourable the Law Minister

has already spoken on this point, but I should like to say one or two more things. The economic status of a woman can only be established by the recognition of the daughter's right to inheritance. It was a point that was brought up by my honourable Friend Sheth Govind Das yesterday. He said—I do not know how far he believed in it—he said. " Why should we have inheritance ? " Certainly, I do agree that a time will come and must come—if we want and believe in equality of opportunity for all, if we believe that disparity of wealth shall go—a time must come when inherited property must go out. But until such time, if there is a difference between the daughter and the son, then that difference means a difference in the status. It is the daughter's status that has to be recognised; she as a daughter, as a woman, is a natural heir. It is not merely from the theoretical point of view that I mention this. We are dealing with intestate succession and it is far more natural that a father will not disinherit his daughter, than a father-in-law would, in spite of what my honourable friend Pandit Bhargava said. A woman's rights in the joint family, which in years gone by may have served a very useful purpose, have not under the existing conditions been so sure in recent years. My honourable Friend Sucheta Kripalani made a point yesterday which I would like to endorse. Those women or men who are social workers know that an analysis of the inmates of rescue homes in this country will go to prove how many of these women are those who have been turned out of the joint family. Without having the training to earn their own living, turned out of their homes, these women have been forced to live a life of shame. That is a question which the Hindu society must face. I am sure those who propounded the Hindu laws would never have contemplated such a state of affairs.

Women are the mothers of the race. No race can advance till its women can be responsible mothers and conscious citizens. There has been a good deal of propaganda done about educated women. A handful of educated women, it is said, want this Hindu Code or want this very halting and mild measure of reform. Sir, so far as women are concerned, it must be a handful because after all the educated element of this country is 15 per cent and the women who are educated are about 3 or 4 per cent even now. So, so far as the women are concerned it must be a handful, but behind them are, not today only but from decades past, the large mass of enlightened and progressive men who stand behind them. It is not the women of this country who alone are responsible for the fact that there is no suffragette



movement, no feminist movement in this country—it is because their champions have been enlightened men, for decades past. Today the same state of affairs exists and I am sure that the majority in this House are also behind us. It is not a demand from the educated women of this country but a demand from all those who want that India shall progress. For, without women becoming conscious citizens taking the rightful place in society, it is not possible for us to progress.

Sir, it is well-known that slaves have resisted when the Shackles of their slavery were removed. It is a fact serfs have objected to freedom. What is more, coming to our own country, it was held by the British that it was only the wretched Congress agitators who wanted freedom but that the mass of the people were quite willing to remain in the pathetic contentment of thralldom. If you speak today of pathetic contentment amongst the women, it is true, it is perfectly true that many women are not yet conscious. But is that a reason that you will not awaken them, that you will not make them conscious, that they should not become equal with men in the joint enterprise that is before us today of building a new India in an atmosphere of freedom ? I ask, is there anyone who feels that it is possible to go ahead without the women of this country ?

Before I conclude, I will say a word or two about what my honourable Friend Pandit Thakur Das Bhargava has said : I must say that I could not quite follow him. This morning he called into question the competency of the Legislature, and in the afternoon just before he sat down he said that he.....

**Pandit Thakur Das Bhargava :** I never questioned the competence of this Legislature.

Shrimati Renuka Ray: So, I suppose what he said last is what goes. He spoke a good deal about the eleven notes of dissent. But as he knows and as the House knows, many of these notes of dissent were on minor issues and such notes of dissent are usually attached to all Bills and it does not mean therefore that a Bill should be recirculated. This morning Pandit Bhargava said that two wrongs do not make a right when he said that this Constituent Assembly obviously is not fitted to draw up the Constitution of India. I wonder, considering that it is such a wrong thing, how he remains in that wrong Assembly. I am not going to contradict him or speak again on all that he has said this afternoon, because I think it was very ably answered before he ever spoke by the Honourable the Law Minister and Pandit Bhargava contradicted some of them himself.

There is one last point that I would like to make. The cry has been

raised that Hindu society is in danger because of this mild, halting measure of reform. I too think that Hindu society is in danger. It is in very grave danger—danger from those who would bind and fetter it ; danger from those who would not allow out-worn customs to be changed but would allow them to choke up the life-blood of our society. If those who today appear to be so concerned about Hindu society would give a little thought, they would agree with what the Honourable the Law Minister said, namely, that you must repair if you want to survive. I do not know who has given a prerogative to some people to stand up for Hindu society. I do not consider those who wish to bind and fetter Hindu law which has been changing with changing times throughout the centuries to be the exponents of Hindu society and Hindu law and those who wish to improve it and bring it back once again to the culture and heritage of our forefathers as people against it. I think it is those who would bind and better it who are not the friends but the enemies of Hindu society. If Hindu society is to regain all that it has lost during the many years and the many centuries of decadence when Hindus were slaves, it has to come in line with the atmosphere of freedom that prevails in this country today. Men and women have to come forward equally to work for the country and there cannot be equality if there is no equality in the social laws of this country. Therefore, I plead that those who today are opposing this Code should give it a little more thought. If they do not, it may be that Hindu society and Hindu law may be left behind, for the march onward must go on and India is not going to go back to slavery or domination by others.

Shri V. S. Sarwate (Madhya Bharat) : I would offer my congratulations to Dr. Ambedkar for his learned and lucid exposition of the Bill, becoming as it was to a professor and an advocate that he is.

As regards the several provisions of the Bill, one would necessarily find himself in agreement with some and in disagreement with others. This is not the occasion to dilate much either on the points of agreement or on the points of difference. I would, in the general discussion, confine myself to certain broad principles and I would try to show that in these principles the Bill goes in a fundamentally opposite direction to the notions which have all along, in my humble opinion, been lying behind Hindu law.

There has been a considerable section of Hindu society against this measure. It cannot be denied ; it cannot be concealed. Some may say that it is a cry of " Religion in danger " ; it is sentimental ; it is reasonless. All the same, those who are bent upon making legislation

which vitally affects a society of more than 20 crores would do well to pause, ponder and consider its substance. They should consider what is there in the Bill which makes so many people—intelligent, educated people—to be against the Bill.

*[At this stage, Mr. Deputy Speaker vacated the Chair, which was then occupied by Shri S. V. Krishnamoorthy Rao (one of the Panel of Chairmen)].*

I submit that there are two reasons for this. The first point that I would refer to is the change in the nature of the joint property. I would submit that the co-parcenary aspect of the joint property has certain very noble ideas behind it. The co-parcenary means that there is a community of interest, as every member of the House knows. It means that every individual has the fullest right of enjoyment but he has no individual share nor the right to alienate the property. The whole trend of modern society, the progress of thought of the society, in my opinion, is in this direction. We may condemn Communists, but Communism in its pure form, pruned of certain things, is bound to come and would come. What does Communism mean in this aspect? As I understand it, it means " From each man according to his ability and to each man according to his necessity ". In other words, a man is to enjoy the property in his hands to the minimum. He has to divert himself of individuality. He is never to consider that he has an exclusive individual interest in the property. If this is the basic understanding and if the world of progressive thought is moving towards this direction. I believe it would be admitted that it would be wrong to go into an opposite direction. Every effort should be made to promote such an idea and to promote such institutions as foster this idea. Dr. Ambedkar in his speech showed at length the attempts which have been made so far by the *Smritikars* and others to fritter away this idea of co-parcenership. Assuming that this is so, the effort now should have been in the opposite direction—not to complete the process of frittering but to restore the co-parcenary property. Shri L. Krishnaswaini Bharati: Impossible. Shri V. S. Sarwate: Impossible? Yes, everything that is not attempted is avoided by saying it is " impossible."

Nothing is impossible in this world if you try. Now therefore I submit that the idea behind the co-parcenary property system is admitted. Each individual member or co-parcener has to enjoy in full the common property, though he has no exclusive individual interest in it and he cannot alienate his interest in it. So when you attempt to deal with it, this co-parcenary you should take the idea as a whole. The idea

of the joint property, as conceived by *Mitakshara*, seems to be this : that there is right of survivorship, and that each family is a unit and not an individual. It means also that the family continues though the individuals in it pass away and whether one is a male or a female one has a right of equal enjoyment. There is equality of sex in this sense. Therefore it follows that whatever is the property of the family has to go to those persons who constitute the family. Therefore if a daughter does not constitute the family, if she is the member of another family, she would necessarily not enjoy any right in that family. It is not neglect or unfairness or want of affection for a daughter. The very idea of a joint family is this : that whosoever is the member, whether widow, male or female, as long as he or she continues to be member of the family, he or she enjoys the property of the family which nobody has a right to alienate. I would have welcomed a provision to the effect that there would be no partition of joint family property and that no person or individual of the joint family has any right to alienate the family property. That would have been very welcome and in the right direction. That would have been according to the idea which is fundamentally behind the joint family system. It is the family which is taken as a unit of society and not an individual. Conceived from this point of view, no sister of mine need think that she has been ill treated, because she and her brother enjoy equal rights in this respect. I would therefore submit for the consideration of the Honourable Dr. Ambedkar that in such a vast country like India, nothing would be lost if there are separate experiments on social units. If it is wanted that a individual should be a unit, let that experiment be tried somewhere. If the joint family should be the unit of society let that experiment also be continued in some places. We are a sufficiently large country to have different experiments in society. Let both continue and let the persons choose the law or system they want to follow. So, instead of having one codified uniform law for the 20 crores of India, nothing would be lost if we have more than one system prevailing in this country.

I may in this connection refer to one of the observations made by Dr. Ambedkar. I admire him for his erudition. I heard him with respect, because in the cause of his arguments he never descended to have a fling at somebody. His attacks were heavy, but they were straight and level. But, in the course of his remarks the 'other day, in the course of his otherwise lucid speech, he said that he did not know why the Brahmans of old were engaged in comprising so many as 137 *Smritis* and enquired whether they had no better engagement. I believe when

the Honourable Minister said this, his historical perspective left him for a moment. I may remind him that these 137 *Smritis* were not written simultaneously. They were written in a period covering more than 250 years at the least. Thus on the average it took them about 20 years to write each *Smriti*. That means one for every generation. But here what happens is that during the space of one year the Honourable Doctor prepares more *Smritis* than one. So he need not have indulged in that unedifying observation. It was also very unnecessary for the development of his argument.

Sir, I was dealing with joint family property. I submit that the basic principle of joint family property is this: that it allows restricted enjoyment.

Sir, the question is often asked, what is Hindu culture; what is Hindu religion as such ? Where angels fear to tread it is difficult for others like me to rush. All the same one has sometimes to make provisional attempts and I shall make that attempt. I think, as far as the present topic is concerned, the fundamental points which the Hindus have kept before themselves are that there should be restraint on enjoyment all along. Not encouragement of enjoyment but restraint on enjoyment was their rule and according to them, for the community of interest, the individual should lose himself.

Now, applying this principle of restraint, I submit that the whole Chapter on Marriage has to be recast. In this respect it has been stated that because ninety per cent. of the people by custom have this right of divorce, what are you going to do ? It is asked, are you going to impose this custom of ninety per cent. on the remaining ten percent ? I submit an argument of this sort is a very good piece of rhetoric, but not of logic. What we have to consider and what the Honourable Doctor has to consider is not what is the custom, but what is good and what is beneficial. We have to consider what ought to be there. That has been the criterion all along and that should be the criterion. There will otherwise be anomaly. For instance, among ninety per cent. of the people there is the custom of drinking. We are certainly not for the matter of that prohibiting prohibition. It cannot be denied that there is the custom of drinking.

The Honourable **Dr. B. R.** Ambedkar: It is not a custom.

Shri V. S. Sarwate : All right, you may think so. I am at liberty to express the thinking in that way. (*An honourable Member* :: " There are not ninety per cent. drunkards.") It is one thing to call it a custom in the community and another thing to call them drunkards. That is the

difference. It is no argument to say that a certain custom is there and therefore it should be continued by law. The argument should be whether it is beneficial and if we consider from this point of view, and if a certain section of the Hindu community says that marriage is indissoluble, why force them and say that there shall be a dissolution, if the parties so choose ? Argument may be advanced, that there is in this Bill no necessity, there is no compulsion, but there is an option. The option is always there. The option to a drunkard is he may or he may not go to the drinking shop. There is always the option, but he does go all the same when there is a drinking shop and a drinking shop has therefore to be closed by law. If it is to apply to a certain portion of the society, I would have welcomed it. In law of marriage, there should be monogamy. I admit it. I would go further and say that if you consider that from the point of view of restraint, there should be no second marriage either of the women or of the men. That would have been a welcome provision, but instead of that we are going to the other extreme and providing that every marriage should be, if so chosen, liable to be dissolved. This is not desirable to my mind. No doubt Divorce was allowed by ancient Hindus at a certain point of time. It was prohibited later on whatever may have been the historical condition first. The reason appears to me is this that the unity of the family was to be kept intact. They wanted that the marriage once performed should not be dissolved so that no other woman should come in ; and that the woman who was in the family should not go away and another should not come in. That contingency should be avoided as far as possible. To my mind this was one of the reasons why a marriage was not allowed to be dissolve. Therefore, my suggestion is this : Let there be two parts in the section of ' marriage '. Those who want that their marriages should be dissolved, let them marry according to civil marriage and let there be free dissolution of marriage for them according to the provisions which you make here. Let the other part be there, which may be sacramental, and in that part let there be no dissolution of marriage. This would, I think, satisfy both the parties. My humble submission is this : Why should dissolution be forced ?

Shri Mahavir Tyagi : In that case 'they will have to decide for separation before they marry.

Shri V. S. Sarwate: I believe my honourable friend has misunderstood me totally. What I say is that those males and females who want that their marriages should not be dissolved should marry according to the sacramental rights and those who wish that their

marriages should in future be dissolved let them marry according to civil marriage.

**Mr. Tajamul Husain :** Does my honourable friend mean that there should be divorce before the marriage ?

Shri V. S. Sarwate: Civil marriage does not mean divorce. It neither means separation nor divorce. When I say civil marriage, it means marriage; it cannot mean divorce. Shri Mahavir Tyagi: It does not mean even marriage. Mr. Chairman : Order, order. Let the honourable member proceed with his speech.

Shri V. S. Sarwate : My submission. Sir, is this : Let us get clear in our minds whether we are going to force certain things which certain sections of the people do not want ? I go further and say when you once admit that sacramental marriages are sacramental, then let religion be the test for providing the conditions for such a marriage. If religion allows child-marriage and marriages of minors, let it be allowed. It is a contradiction in terms first to say that a marriage should be according to religion and then to add that it shall be according to religion and also according to what is provided in this Bill. That is contradiction in terms. Either allow sacramental marriages or do not allow sacramental marriages, if you do not like that. In that case, say that all marriages will be civil. If you say sacramental marriage is to be allowed, then the marriage has to be performed according to the sacraments. This is my humble contention and in so far as the provisions of section 7 of the Bill are concerned, they are not according to sacraments. There are certain other things added to sacrament. That should be strictly according to the religion, if religion is to be allowed. This is the second thing which I bring to your notice and this can be very easily done. This would satisfy and may to a great extent remove the causes of dis-satisfaction which at present exist. Dealing with principles only, my simple suggestion is this, that in this very Act there should be provision which should allow society, and the joint family in co-parcenary form to continue. Nothing would be lost thereby. In this country there are Muslims, there are Christians, there are Parsis—Parsis are a very small community—and still if they are allowed to have their own law of succession etc. what would be lost if a certain larger section is allowed to have co-parcenary, if they so chose. If this principle is once accepted then changes can be made in the whole draft according to that principle.

My further submission is that the Bill may be re-circulated for opinion. Here I do not touch on the ruling which has been already

given by the Chair. The question that then arose was whether for purposes of the rules publication was sufficient and the ruling was that it was sufficient. That does not however preclude me from raising the point whether it is desirable that the Bill should be re-circulated. My submission is that it has been lost sight of that the Bill if passed would be automatically applicable to States whatever Dr. Ambedkar may say to the contrary. My humble opinion is that it would apply to all those territories of states which have merged in the provinces and all those areas which have agreed that the Centre would have the power to legislate for them.

Shri Sita Ram S. Jajoo (Madhya Bharat) : What is the objection if it applies to Indian States as well ' ?

Shri V. S. Sarwate: What I am saying is that it should apply. I am in Favour of it. I do not understand, why honourable members without allowing me to speak, go on anticipating me and pass certain remarks. I was submitting that the Bill should apply to the Indian States. I was only submitting that if it is to so apply and that is very much my wish, then there arises a fundamental right, which you ought in justice grant to every large area which is to be governed by your bill, to express its opinion. This Bill was not published in these large areas and therefore the peoples there were not in a position to give to the Bill that serious consideration which they would otherwise have given. Now when they know that the Bill would apply to them, and the Bill is published they would be in a position to express their reaction. It is a fundamental right of every person to be given an opportunity to express his opinion regarding any legislation which is going to effect him. It is further the duty of every representative of theirs to ascertain their views before he gives his vote here. Therefore, both from the point of view of the representatives of the States and from the point of view of the people of the States, it is only just that some time should be allowed to them to give their opinion. Therefore, I suggest a *via media*, that if in any case this Bill is not going to be finished in this session, if that be the contingency, which I think it may be, the honourable the mover of the Bill may consider whether it would not be desirable to take this up in a special session later on; the time that may intervene, namely two or three or four months would be quite sufficient to get the reactions of those people. I think this would be just and would also be in accordance with the spirit of the publication provisions. I appeal to the House to see whether justice does not require this. It should not be presumed that the last word has said been on the Code. It may be that



the humblest of the humble may come forward with suggestions which may be useful to the learned Doctor, if opportunity is thus given, it would both satisfy the ends of justice and may be useful also. With this appeal, I have finished. Sir. Shri H. V. Kamath: Mr Chairman.....

**Shri B. Das** (Orissa: General): On a point of order. Sir, can a bachelor, who has not married and has not begotten a son too offer pind to his forefathers, make a speech on this Bill and contribute to the discussion ?

Mr. Chairman : There is no point of order in this, as long as he is a Hindu, he can speak.

**Shri H. V. Kamath** : I shall also answer the point of order. Sir, rising, as I do, after two lawyer friends and a woman friend, I fear I am labouring under a handicap. I have neither the legal argument of my honourable friends Pandit Thakur Das Bhargava and Mr. Sarwate, nor the sweet reasonableness of my honourable friend Shrimati Renuka Ray. As far as the lawyers are concerned. I am sure that my honourable friend the Law Minister will take care of them and will reply to the arguments that they have raised in the course of their speeches today. As regards Shrimati Renuka Ray, I am broadly in agreement with her and so there is no need for me to take up any of her arguments with a view to counter them.

My honourable friend Mr. B. Das raised a point of order when I stood up. That very point of order, I think, goes in my favour. I feel that my only claim to speak on this measure before the House is that because I have neither a wife nor children nor property worth the name, I can bring to bear a dispassionate mind to bear on this subject, unswayed by emotions of the heart. Most of the provisions of this Bill relate to marriage and property, adoption and succession, provisions regarding matters which could be summed up in two words of most of our philosophers, namely, *kamini* and *kanchan*. Not having been so far encumbered with either, I hope I will have your indulgence and the indulgence of the House in making a few remarks on this Bill in a more or less disinterested manner, not uninterested, but disinterested manner.

This century, the 20th Century after Christ has, as we all know witnessed the emergence of women upon the stage of history, in Asia, as well as in Europe and America. India and our Hindu society have been no exception to this world movement. Fatefully interlocked with all the revolutionary upheavals which in our own time have been ripping open and transforming old societies inherited from the

nineteenth century and its long past are the relations between men and women. Our age has been marked by the dynamism of women who, with men, have set the world on fire. (*An honourable Member* : " But you are an exception.") and have also helped to frame plans for the world's reconstruction. Breathes there, I ask, a man with soul so dead, who does not recall with pride, and a certain elation of the heart, the remarkable and heroic achievements of women—aye, poor, ignorant illiterate women—on the Field of *non-violent* battle called Satyagraha, and ever on that more sanguinary field of battle, of blood and iron, of Fire and steel. The hand that rocks the cradle has shown itself strong enough to wield the sword and gentle enough when necessary to raise itself in benediction against the aggressor. Leaving aside other lands and other climes, in our own India, we all know how women, along with men, though quite ignorant of modern warfare and though quite uninured to the lathi, the bullet and the prison, how they have flocked in thousands to the banner of Mahatma Gandhi and Netaji Subhas Chandra Bose. This story is too well known, for me to recount at any length. It is in this context of fast developing social and economic change that we have to view the measure that has been brought before the House. For, no law can function or can be made in a vacuum and no law can be divorced or viewed apart from the social milieu in which it has had its birth. In short, this age can be summed up in the facetious remark of a wag who said that today, women sit in Parliament and stand in buses. This in a nutshell, is the revolutionary change that has overtaken the present age, Sir, I feel that I am more or less a political Parivrajaka and I set forth a few observation on this Bill..

I am glad that my honourable friends in this House who are not immediately affected by this measure have taken such great interest in this Bill. My honourable friend, the redoubtable Pandit Naziruddin— I feel, Sir, that the title is not entirely unreserved. If, Sir, Mountbatten could be called a "Pandit" on the 15th August 1947, I feel that Mr. Naziruddin has a greater claim to be called a " Pandit " than Lord Mountbatten of Burma. Many such friends have been taking an interest in this measure and I welcome it as a happy sign of the times and a good augury for the future, for thus we are going in the right way of being one unified society, and ere long we will have one uniform civil code for the whole of our country.

Those Members, within and without the House who are not wholly in favour of the Bill and who do not want to go the whole-hog in this regard, take their stand—at least some of them—on the *Smritis*, the

*Shastras* and our Dharma. Well, Sir, what is Dharma ? Unless we decide that question we cannot appreciate or reject the stand that some people in this country are taking with regard to this measure. Dharma ! Is it merely a code of ritual and externals and ceremonies or is it something deeper, that pertains to the soul, the heart, the mind and the spirit ? Dharma ! The etymology of this word in Sanskrit is— Dharma is that by which the world is supported, *yenedam dharvate jagat*. That by which the world—"jagat"—is supported is Dharma.

Now are we not to ask whether the observance of a few ceremonies, rituals, and formal conventions constitute Dharma, or whether it is something deeper ?

As regards the *Smritis* which are interlinked or interlocked with Dharma, my honourable friend Dr. Ambedkar said the other day that there are perhaps 137 *Smritis*. If I am wrong he will correct me. I believe he has counted them. Of the *Upanishads* it is stated there are 108 and so many other unknown and unearthed *Upanishads*. There may also be many more *Smritis* unknown and unearthed. Of the *Smritis* known to Dr. Ambedkar there are 137. And now we have got the 138th *Smritis*. He will pardon me if I refer to this, not in a light-hearted fashion, because this is also a measure, which although not revolutionary, has introduced changes in our Hindu social relations. So I can apply the same term as has been applied to the other Hindu social codes and social texts that have been already written for us. This we may call the 138th *Smritis*. I may call it the Bhim *Smritis*. I hope Dr. Ambedkar will pardon me if I refer to this as the Bhim *Smritis*. If I have got to include the name of the other protagonist of the movement, which has culminated in the drafting and the presentation of this Bill, I would refer to it as the Narasimha. It is the Rau Committee which has led to this Bill. Ultimately I will not refer to it as the Bhim *Smritis* but the Bhim Narasimha *Smritis*.

Coming to the measure before us: though the *Smritis* are well-known, still they differ among themselves. The same *Smritikam* at times differs in different texts of the *Smritis*. It is very well known that even a poet is not consistent in his poetry. Shakespeare referred to women in one play as " Frailly, thy name is woman ": in other play he goes on to describe a woman who was strong enough to inflict wounds in her own thigh: I mean Portia of Brutus ! Coming to our own country, the great poet and philosopher, Tulsidas has said : *dhor ganwar Sludra dru nari yah sab tadana ke adlukari*. For the benefit of my friends who do not know Hindi, it means that a rustic, an illiterate man,

an animal, a shudra and a woman—these all deserve a beating.

**Shri Raj Baliadhir** (United States of Matsya) : I would inform the House that the interpretation put by Mr. Kamath upon this well known Cuplet is absolutely incorrect.

**Shri H. V. Kamath** : I hope my friend will give us his interpretation which he has to speak.

**Shri Raja Bahadur**: It means that a Shudra who is like a *Dhol* or is uncivil and a " *nari* " (i.e. woman) who is like a pashu (beast) deserve admonition. It means that *Dhol*, (hollow) Shudra pasu, (beastly woman) deserve chastisement.

**Shri H. V. Kamath** : But our law-giver Manu says : *yatranaryastu pujiyante ramante tatra devatah*.

It means that where women are respected. there the gods are happy.

Leaving aside the various *Smritis* and the *Shastras*, what does our own—the greatest *Shashtra* to the Hindu—says ? At the time when the *Gita* was preached by Srikrishna to Arjuna, there were so many customs among the Hindus which were derogatory to certain sections of the people that Srikrishna categorically told Arjuna in one of the well known texts on the highest goal of any human being:

Mr. Chairman : The honourable member can continue his speech on Monday.

*The Assembly then adjourned till a Quarter to Eleven of the Clock on Monday the 28th February 1949.*

HINDU MARRIAGES VALIDITY BILL EXTENSION OF TIME FOR PRESENTATION OF REPORT OF SELECT COMMITTEE

**Pandit Thakur Das Bhargava** (East Punjab : General) : I move: " That the time appointed for the presentation of the Report of the Select Committee on the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be extended upto the 25th March, 1949."

The date given here on the order paper is 11th March, but with your permission I would like to amend it to 25th March as the honourable the Law Minister will be out of Delhi and he will not be able to devote much time to it. Therefore I move the motion with this amendment.

I want to say that I am very anxious that this Bill may be put before this House this session and therefore I request the honourable the Law Minister and the authorities in charge of this Bill to kindly see that the Select Committee makes its Report by the 25th March. I also beg the

House to supplement my request to the authorities so that, as the Bill is a very important one, it may be passed this session.

Shri **R. K. Sidhva** (C. P. and Berar : General) : The matter is entirely in the hands of the Select Committee. What has the House to do in this ? My honourable Friend should request the Select Committee to expedite the Report and I think they will be pleased to do it.

**Pandit Thakur Das Bhargava** : I want an extension of the date. I want to urge that it is my anxiety that the Law Minister should see that the report is made in time and the House should support me in this.

Mr. **Chairman** : The question is :

" That the time appointed for the presentation of the Report of the Select Committee on the Bill to provide that marriages between Hindus, Sikhs, Jains and their different castes and sub-castes are valid, be extended upto the 25th March, 1949."

The motion was adopted.

Mr. **Chairman**: The House will now proceed with the further consideration of the Hindu Code.

Shri **H. V. Kamath** (C. P. and Berar : General) : Mr. Chairman, when this House adjourned on Friday afternoon the name of Shri Krishna was on my lips. I was saying that even so far as the highest goal of human existence is concerned man and woman have been placed on an absolute footing of equality by Shri Krishna in the *Gita*. The *Gita* to the Hindus is the sacred *smriti*, the supreme *shastra*, the quintessence of all philosophy and all religion. In that, very well-known verse, Shri Krishna says—

" *Streeyo Vaishyastathu sudrastepi yanti paramgatim..* " *Women, Vaishyas and the Shudras* who were apparently the down trodden and the suppressed classes or castes of that age, even they— Krishna says—are on a par, on a footing of equality, with Brahmana and the Others.

**Shri L. Krishnaswami Bharati** (Madras : General) : You are right, Mr. Kamath.

Shri H. V. Kamath: So far as *moksha* and the *paragati* are concerned, there is absolutely no bar to the attainment of the same by women. I am sorry that at the present day there are some men, and even certain *swamis*—so called religious or spiritual heads—who believe that man and woman should be placed on an unequal footing. I agree that they are not identical in all respects..... Maulana Hasrat Mohani (U. P. : General) : How are they equal ? Shri H. V. Kamath :

But to say that they are unequal and to buttress that argument by fantastic reasons is to my mind shocking. The other day I had the good-luck—or the ill-luck—of listening to a *swami* saying that man and woman are unequal. And, pray, what were the reasons for that statement ? He said fantastic, the House will agree—he said that man grows a moustache and woman does not. I am not joking, Sir, many of my friends were present at the meeting which the *swami* addressed, and he said it in all earnestness, in all seriousness, that man grows a moustache, woman cannot grow a moustache, and the woman at most can bear three, four or five children in a year. An Honourable Member: In a year ?

Shri H. V. Kamath: Depending upon whether she produces triplets, quadruplets or quintuplets. Sir, he went on to say that man, however is potentially capable of being the father of a hundred or more children. This, Sir, to my mind is a fantastic argument.

When we talk of equality of man and woman, we regard that on a spiritual basis which has been envisaged again by Shri Krishna in the Gita. He says:

" *Sarvabhūtaṣṭhamānānam sarvabhūṭmī chatmuni.* " That is the basis, that is the yardstick, that is the measuring rod for equality of human beings or between man and woman.

" *Yo man paśhyati sarvatra sarvam cha mayi aśhyati.* "

This is the test, this is the criterion, this is the standard, this is the yardstick for equality of human beings, whether high or low, rich or poor, man or woman.

Well, Sir, I do not subscribe to that notion of inequality propounded by the *swami*. On the other hand, I also do not believe that woman—as some of them do today—attain equality with men by taking to smoking and drinking. That again, Sir, is something which is to be deprecated if by that they seek equality with man. Nor do I subscribe to the progressive conception of woman—progressive in the Western sense—who, perhaps in imitation of the West and so trying to be progressive, take to ball-room dancing and other Western habits. This, Sir, is also to my mind no way of securing equality with man.

Shrimati Purnima Banerjee (U. P. : General) : It is not included in the Hindu Code. Does she dance alone without a partner ?

Shri H. V. Kamath : I know that but we are talking of the equality of man and woman. And here, Sir, our great savant and philosopher, Dr. Sarvapalli Radhakrishnan who is an authority on Hindu *dhama* and Hindu way of life, says:

" The modern woman, if I may say so, is losing her self-respect. She does not respect her own individuality and uniqueness. but is paying an unconscious tribute to man by trying to imitate him. She is fast becoming masculine and mechanical.

Shri R. K. Sidhva (C. P. and Berar : General) : What about the modern man ?

Shri H. V. Kamath: I hope. Sir, our women will take this to heart and will not underlake such attempts at equality with man.

Shreemati Annie Mascarene (Travancore State) : May I ask the question whether modern man is in any way better than that ?

Shri H. V. Kamath: That is for women to answer. Well, Sir, when I therefore talk of equality between men and women I have before me the historical examples of Sita, Savitri, Damayanti, Gargi, Mailreyi and Ubhayabharali. Will you permit me to read from our own ancient history about these women and the place these women occupied in our ancient Vedic times and even later, on which so many of our opponents to the Hindu Code depend today? It is said that in the Vedic and Upanishadic age, women occupied a very high place in society. Among the exceptional women of Upanishadic times the name of Mailreyi stands out in bold relief. The lustre of her spiritual mind illumines the world even today. For sheer intellectual acumen two women stand out in singular brilliance. An All-India religious conference took place—it has been the tradition in this country to have conferences of all sorts and religious conferences were not an exception—an all-India religious conference took place in the prehistoric age and another in the post-Buddhistic age. They had been summoned not for mere academic debate but for the establishment of principles that should govern the spiritual life of the nation. The former was championed by the sage Yagnavalkya, the same as our law-giver and the latter by the great Shankaracharya. The first conference, Yagnavalkya's conference, was convened by King Janaka, the great Janaka, the *karma yogi*, when the sages assembled from all quarters of India, from Kashmir to Kanya Kumari and I suppose from Khyber to Cherapunji, are silenced, Gargi boldly rises on behalf of the women, championing the cause of the humiliated. That, Sir, is the ideal towards which our women ought to be progressing and which they will, I hope, attain. Ere long, Gargi is defeated, but only after putting up a tough fight.

In a second Conference, Sankara Acharya's conference, the task of presiding over this momentous meeting falls upon Mandanamishra's

wife, Ubhayabharati. Now, it is very important—and I would like my women friends to mark this— that in the history of the world there is not a single instance of a woman being chosen as a judge of an important meeting and making such an exceptional demand on her intellectual ability as well as integrity. She gives—Ubhaya Bharalhi— gives the verdict in favour of Shankaracharya. (*Honourable Members: Hear, hear,.*) With the result that her husband becomes a monk and a disciple of his opponent, whose view henceforward becomes acknowledged as the paramount creed of the country. " In fact ", the author says—1 am reading from the " Cultural Heritage of India " published by the Ramakrishna Mission—" It is not the original authors"—mark these words ' it is not the original authors '—" with the emancipated mind of creative thinkers but the mechanically minded commentators"—Tikakars, not the *smrilikars*, but those who wrote *tikas*—" who worked for the suppression of the rights of women, whom they bluntly assumed to be in league with ignorance and illusion."

Now, Sir, many of our friends who are opposing this measure,— I do not mean in the House but those who are outside—they take their stand on Dharma. The other day I posed this question, " What is Dharma ? ". One of the pamphlets issued by the Anti-Hindu Code Committee presumes to give us some advice, and what is that ? They quote the old *sloka*—I do not remember exactly where it occurs— but the Panchatantra quotes it: " *Nasasabha Yatra na Santi vridciah, vridhmateye na vadanti dharmam.* "

' That is not a Sabha or Assembly where there are no vridhahs. '

An Honourable Member : But we have so many of them here !

Shri H. V. Kamath: That man is not a *vriddhah* who does not talk of Dharma. I, Sir, am sorry that our friends of this Anti-Hindu Code Committee have not exactly understood the meaning of " vriddhah"—who is a vridhah and who is not. In the Mahabharata there is a story : Saraswata Muni, a young boy of twelve, when there was famine in the country and all the old rishis who were fasting and doing penance on the shores of the Saraswati river fled for fear of their lives—they wanted to save their lives—this young boy at that time stuck to his post and his mother Saraswati, that is why Saraswati fed him on fish in the morning, Fish at noon and Fish at night—that is why Saraswat Brahmins even today eat fish. This Brahmin boy, in spite of the famine, stuck to his post. The story goes on to say that the famine raged for many years in the land—twelve years— but our young boy, Saraswat Muni—the progenitor of all



Saraswats in the world—continued to stay. After the famine was over, the *rishis* who had fled for their lives started coming back in dribbles, one after another, to the shores of the Saraswati river to resume their *tapasya* interrupted by the famine and they tried to boss over this young boy of 24. He was 12 when the famine started, and he was 24 when the famine ended. They started bossing over him. They said, " You sit at our feet; take instruction from us; learn from us; become our disciple." He said, " Fie on you. Shame on you pretend to be *munis*, *rishis*, *tapasvis*, and you fly for your lives ; fly for fear of death. You have got to sit at my feet and learn from me." Thus said the young man of 24 to those old men of 70 and 80. The Mahabharata goes on to say: " *Na tena vridho bhavati yenasya palitam shirah yo vai yuvapyadhyancLitam devah sthaviram viduh. "* (A man is not a *vridha* merely by virtue of his grey hair. Even a youth who has studied well is called a wise man by the gods.) That man is *vriddhah* who has attained *vriddhi*. Actually the word " *vriddhah* " is wrongly translated as old. It means that man who has attained *vriddhi*, you call it, wisdom, growth, development—that is *vridhi*... Here our friends say :

" *Na sa Sabha yatra na santi vriddhah— Vriddha na te ye na vadanti dharmam "*

I think that even in that sense of " *vriddhi* " or wisdom, there are a number of my friends here who will live up to that standard. But my friends have stopped short of quoting the whole *shloka*. They start by saying:

" *Na sa sabha yatra na santi vridhah Vriddha na te ye na vadanti dharmam."*

But what is Dharam ? The sloka goes on to say later on what is *Dharma*. These fellows conveniently omit that portion of the sloka. The sloka goes on to say: " *Dharmah sa na yatra na satyamasti "*

That is not *Dharma* where there is no *satya*. Therefore, my quarrel with those who take their stand on *dharmam* is that they have not understood what is Hindu *Dharma*.

I will again crave your indulgence to tell the House what our great savant and philosopher. Dr. Sarvapalli Radhakrishnan has to say on the subject, especially Hindu Dharma. He tells us:

"There has been no such thing as a uniform stationary, unalterable Hinduism whether in point of belief or practice. Hinduism is a movement ; not a position ; a process, not a result ; a growing tradition, not a fixed revelation. Its past history encourages us to

believe that it will be found equal to any emergency that the future may throw up. whether on the field of thought or of history..... "

We are happy that today the prediction is coming true. It was Swami Vivekananda who said fifty years ago that Vedanta will become the religion of humanity—the vedanta which has been given to the world by our seers, *rishis* and *munis* Radhakrishnan goes on to say:

" We are beginning to look upon our ancient faith with fresh eyes. We feel that our society is in a condition of unstable equilibrium. There is much wood that is dead and diseased that has to be cleared away.

I hope. Sir, that most of our friends here are in their own way leaders of Hindu thought and practice, I am sure of that —

" Leaders of Hindu thought and practice are convinced that the times require, not a surrender of the basic principles of Hinduism, but a restatement of them with special reference to the needs of a more complex and morbid social order.

" Such an attempt ", he says, " will only be the repetition of a process which has occurred a number of times in the history of Hinduism. The work of readjustment is in process. Growth is slow when roots

are deep. But those who light a little candle in the darkness will help to make the whole sky aflame."

I would commend this statement of the Hindu *Dharma* to those of my friends who oppose the Bill, even the consideration of the Bill on grounds of *Dharma*. Who does not know and who does not reconnect that this cry of ' *Dharama* in danger ' or ' Society in danger ' was raised by those that wanted to block every reform of Society attempted in the past ? Is it not a fact that twenty-five years ago, when the movement against *asprishyata untouchability* was started, some of our men, even high-class orthodox Hindus said that Hinduism was in danger, social order was in danger and that disruption of society was coming ? Yet, did we not persist in that much-needed reform ? Did we not help to accelerate the evolution of Hindu society on an egalitarian basis ? As a culmination of these attempts, have not we adopted an Article in the draft Constitution prohibiting untouchability and banning it in any shape or form ? If we could do that in spite of what the orthodox *pandits* claim for Hindu *Dharama*, surely I do not see any reason why we should not proceed to legislate or provide for the regulation of social relations and personal law.

Again, Sir. honourable Members will recollect the opposition that

was started against the Sarda Act, which tabooed child-marriage, on the ground that Hindu *Dharma* was in danger and that Hindu religion and Hindu society were in danger. In the last century when the custom of *sati*, cremation of the widow with her husband, was sought to be abolished, these same reactionaries who block the road to progress denounced the attempt slating that the Hindu-Dharma sanctioned *sati* and that it granted the highest salvation to women and therefore it should be continued. In spite of their agitation and obstruction, much-needed reforms like that were put through.

Pandit Thakur Das Bhargava said the other day that this Bill had not reached the rural population and that the rustics, the people in rural areas have not seen or read or considered it. He expressed anxiety to know their reactions to the Bill, before it was proceeded with in this House. When he said so, he forgot the fact that some of the Bills he himself had introduced had not been seen by the peasants of his own Hissar. I wonder if on his advice we are going to circulate copies of our Bills to every village and hamlet and homestead in the country. Shri Mahavir Tyagi (U. P. : General) : Peasants do not count these days.

Shri H. V. Kamath : I am astonished to hear from Mr. Tyagi that peasants do not count in these days. If they do not count, who does ? Honourable Members: You.

**Shri H. V. Kamath:** I am indeed grateful for the compliment. I hope, Sir, in the near future, not merely I, but all my friends in the House will count equally with me.

Sir, while I have every sympathy with certain observations made by Pandit Thakurdas Bhargava, I do not think that his opposition to the Hindu Code Bill on the ground that there has been no circulation or proper publication among the people affected, can stand scrutiny. That argument is absolutely untenable. In that way, every Bill sought to be passed here, which affects the lives of millions, would have to be sent to them, in order that they may register their approval or disapproval of the same.

Now, Sir, this vexed question of equality, I hope, I have disposed of in a satisfactory manner. Sir, men and women are equal on a spiritual basis. The Gita, the Smritis and Shri Krishna himself have preached this doctrine of equality.

Coming, Sir to the question of property, properly has been, according to most philosophers, political, social or otherwise, the root of almost all evil in the world, in this regard I subscribe to the proposition made by Seth Govind Das—he is not in the House now—

that it would be best if private property were abolished. Even litigation will decrease a good deal if this is done. One of our greatest law-givers and statesmen of ancient times—not Manu or Yagnyavalkya—but a warrior statesman, Bheeshma Pitaniaha has expounded his doctrine in two *parvas* of *Maha-Bharata*. viz. *Shanti Parva* and *Anusasanika Parva*. There he tells Yudhisthira about property: *aktinchanasya shuddhasya na illiyamilua lakshyaye akinchanyamcha rajyaimcha tulaya samatolayam atyarichyata daridryam rajyadapi guradhikam nityodvignohi dhanavn mrityorasyagato yatha*. He tells Yudhisthira that his kingdom and voluntary poverty he has weighed in the balance. He says that this *akinchanaya* voluntary poverty has proved more than the other. Because, he said, *nityo nilyodvignohi dhanavan mrityorasyagato yatha*. The nearest equivalent to this in English is "Uneasy lies the head that wears the crown". If a man has property he is afraid of death.

I am in agreement with Pandit Thakur Das Bhargava when he says that a wife and husband should become one not merely in love, but in property as well. Sometimes it happens that love is their only property. Husband and wife may have no property at all. Their only property may be their mutual love. But, Sir, we should face the stark reality of life today. It was, however, refreshing to hear Pandit Bhargava's personal experience in this respect. This world would be a happier place to live in, if men and women, husbands and wives are in the same happy position as Pandit Thakur Das Bhargava and his wife are. There are, however, hundreds of cases today where the relations between the wife and husband are not as happy as they should be, or as we wish them to be. (*Interruption*) I am speaking, Sir, from facts narrated to me by friends like my honourable friend. Mr. B. Das and I have come in possession of these facts, as told to me by my honourable friends, who have got experience in this direction.

Our Hindu Code Bill provides in this respect that a woman should be entitled to an absolute right in her property. In the Vedic ages and in the ancient ages, upon which our opponents of Dharma and the Hindu Code Bill take their stand, it was only in medieval times, when Hinduism was on the decline that women's rights to property came to be restricted—in the Vedic period the social position of women was generally high.

Mr. Chairman: There are a number of speakers, who want to speak. I appeal to the honourable Member kindly to be as short as possible.

Shri H. V. Kamath: I will try to be short, but I am afraid, the subject is so vast that it is difficult to be short.

**The Honourable B. R. Ambedkar** (Minister of Law) : There will be plenty of occasion for Mr. Kamath to speak. There are at least 130 sections.

Shri H. V. Kamath : But I do not want to let some things remain unsaid today. Now in the Vedic period, I was saying that the social position of the women was high. An unmarried daughter was offered a share in her father's property, and the married daughter was given no interest therein, but she got ample dowry at the time of her marriage. So the argument advanced by my honourable friend. Pandit Thakur Das Bhargava, in this respect, I think, may be considered by the House and by the Honourable Minister sympathetically ; because fundamentally being opposed to property myself. I do not think that any purpose would be gained by making the property position worse than it is today. Dr. Ambedkar referred to an instance of the property of a Hindu family consisting of 12 sons and one daughter. That is very well for him to quote that instance, but may I quote the other instance where there are 12 daughters and one son. What will happen if the Hindu Code Bill as it stands is applied in this case ? The family property will have to be divided among all the daughters and one son. The son will be left in a little corner of the house, and if the daughters get married, they have got the right to bring their husbands and they have the right to dispose of the portion of the House to a stranger. Therefore the one little son like a little mouse will creep here and there and he would not have even a comfortable cosy corner to live in.

Therefore, Sir, this question of property is a very vexed question and we might consider whether a daughter instead of getting the property herself, whether she might not be allowed an equivalent share of the property in cash or jewellery, or whatever she might choose to have, as it was done in ancient times and in Vedic times. There was no property share at the time of marriage but she was given ample dowry in lieu of the share of the property.

*The Assembly then adjourned for Lunch till Half Past Two of the Clock..*

*The Assembly re-assembled after Lunch at Half Past Two of the Clock.*

*Mr. Chairman (Shri S. V. Krishnamoorthy Rao) in the Chair.*

Mr. **Chairman** : Before we begin the debate, I would like to make a suggestion. There are about 25 names on the list. This is a very

important measure and as many speakers as possible would like to give their views on the Code. Therefore, I would request honourable Members to be as brief as possible and refer only to the relevant points for or against the Bill.

Babu Ramnarayan Singh (Bihar: General): Sir, my name also may be included in the list.

Shri B. Das (Orissa : General) : I did not know that I had to send in my name; I thought I would catch the eye of the Speaker.

**Mr. Chairman** : That is why I am telling honourable members to be as brief as possible and refer only to the salient points for or against the Bill. Members who want to speak may kindly send chits.

Mr. Tajamul Husain (Bihar : Muslim): May I know. Sir, whether my name is in the list ? I spoke to the Deputy Speaker yesterday on Friday last.

Mr. Chairman : No harm in sending a fresh slip. Shri H. V. Kamath : Sir, before I resume the thread of my little speech, I may assure you that I shall take much less time than my honourable friend. Pandit Thakur Das Bhargava did. Mr. Chairman : You have already taken an hour. Shri H. V. Kamath : I said less time than my honourable friend Pandit Thakur Das Bhargava.

I was speaking about property: the basis for the allotment of property, was the principle which was expressed by Kanwa after he bade farewell to Shakuntala. Kanwa said: "*Artho hi kanya parakiya eva tamadya sampreshya parigrahituh jato mamnyitn vishadnh prakamam pratyarpitarya ivnutaratmo.*"

The First line, " Artho hi kanya " does not mean, as has been literally translated, that a girl is somebody else's property. It means that a girl separates herself from the father's home when she gets married. It was on this basis that she goes into another household that in olden times. Vedic and later times, that a daughter was given no interest in the property, but ample dowry was given. Again, in the Vedic and later Smriti times, only when a father had no son, he appointed his daughter as the Putrika and such a daughter was equal to the son. This principle can very well be considered by our new law makers. They may try to incorporate the gist of this principle in the Code.

I wish agricultural property were completely excluded as it has been already excluded so far as the Governors' provinces are concerned. I refer to Part VII Chapter 1. Section 94 says: " This Part shall not apply to agricultural land in Governors' Provinces; " Already, there is a cry

against the fragmentation of land. We may hasten slowly in this regard so that this may not lead to further aggravation of this evil. As a matter of fact, if the entire land is nationalised, then no difficulty will arise; so long as this question is hanging fire and is not finally settled, we may decide to exclude agricultural land not merely in the Governors' provinces, but also in the Centrally administered areas from the operation of this Part.

Now, I come to the great question which has agitated humanity from the dawn of time: I mean that of marriage and divorce. On this question, the principle that we should go by, that should be accepted in legislating on this subject must be, to my mind, " Marriage should be easy, but divorce difficult." I think if this sound rule were adopted for law making, it would solve many of our troubles.

Sardar Bhopinder Singh Man (East Punjab : Sikh) : In your case, marriage is more difficult than divorce.

Shri H. V. Kamath : There are always exceptions to a rule; I suppose I am one of them.

If I may be allowed to quote a recent historic instance, der Feuhrer Herr Hitler in Germany, when he fought the election in 1932, one of his election slogans was, " a job for every German man and a husband for every German woman ". This slogan brought him, I understand, millions of women's votes, when he promised a husband for every German woman. This proves to the hilt the principle that I have sought to place before you that marriage should be easy and divorce difficult. My honourable Friend Pandit Thakur Das Bhargava, the other day, while speaking on this subject referred to this and said that there are usages and customs in various parts of the country according to which divorce could be effected. There is even this simplest custom, I am told, according to which the man says ' Talak \* three times and the wife is divorced. It may be that or some such custom; I do not know; that is why I said, I am told. I personally think that divorce should not be easy. One of the modern States, Soviet Russia, at its inception in the early twenties of this century, made marriage as well as divorce equally easy. But, by experience they have learnt that family as a social unit has got to be preserved and strengthened even in a communist State and therefore now, though marriage is easy, divorce is next to impossible. I therefore think, however much I am inclined to agree with Pandit Thakur Das Bhargava that certain usages and customs must be given currency and must be kept alive, as regards divorce, I think that the procedure adopted must be very difficult, so that, the family as a

social unit may be strengthened and preserved.

There is one more observation that I would like to make on this subject. There are instances. Sir, where due to certain causes, a dissolution of marriage may not be quite desirable or may not even be agreed to by one of the spouses : by the husband or by the wife. In such cases, where the wife agrees that the husband may marry another wife, herself also living in the same or another house. I do not see any reason why, in spite of the reasons mentioned here, permission should not be granted to either of the spouses to marry when the other consents, without dissolution of marriage. In Delhi, we are aware of one notability who has got several wives living at the same time, though perhaps in different houses.

An Honourable Member : Who is that? Shri H. V. Kamath : No names here please. Mr. Tajamul Husain : I have not been able to understand ; does my honourable friend agree with polyandry ? Shri H. V. Kamath : I will only say that ..... Mr. Tajamul Hussain: Only an unmarried man can say so. Shri H. V. Kamath : Sometimes, where a couple has been married for a long time, the Hindu mind cannot reconcile itself to the breaking of marriage ties with the wife even though the purpose of marriage is being frustrated. Therefore from the standpoint of love and humanity the new Code should provide, in my mind that on such an occasion a husband can get permission from his wife to marry another wife, and if she consents then the Court should not stand in the way. But the ideal of marriage as has been stated by Pandit Thakurdas Bhargava should be one in property and love. I shall go further and say that there should be two minds with but a single thought, two hearts that beat as one.

**Shrimati Hansa Mehta** (Bombay : General) : In Polygamy there will be more than two hearts.

Shri H. V. Kamath : I am not against polyandry if the husband does not mind it.

Shrimati Purnima Banarjee : Very liberal! Shri H. V. Kamath : I take my stand on the principle of equality and I go to the extreme limit for both man and woman. It has been a regrettable incident or development of our history—our long and ancient Hindu history—that whatever rights women enjoyed in the early Aryan Age—the Vedic, Upanishad and Smriti age—these rights fell into disuse and were not given effect to in the later medieval age. I hope that this Code will so work that women, whose paradise was lost in the dark medieval age, paradise they will regain in the modern age.



I have received a little warning from a friend outside, telling me in the name of God, in the name of Mahatma Gandhi, the Father of the Nation, in the name of Netaji Subhas Chandra Bose, please do not vote for this Bill. That very argument, I think, very well applies to a vote in favour of the Bill. I can say.....

**Shri B. L. Sondhi** (East Punjab: General): Is that friend male or female ?

**Shri H. V. Kamath** : I can say, I make bold to say that in the name of God who has created man and woman equal ; in the name of the Mahatma, the Father of the Nation, who stood for the complete equality of man and woman ; in the name of Netaji Subhas Chandra Bose, who sought and accomplished the complete emancipation of man and woman to the extent of calling women to battle if need be ; in the name of God, in the name of Gandhi.in the name of Subhas, I think this Bill is a forward measure which will lead to the greater glory of Hindu society.

I have only one more remark to make. My honourable Friend, Dr. Ambedkar, said the other day in his peroration that either repair betimes or perish. We have to repair. Indeed we are repairing. I think the time has well-nigh come when, if we do not repair, then society will be rent in twain. A stitch in time will always save nine : otherwise the rent will grow more and more till society will be rent in twain.

I began. Sir, on Friday, the day before *Maha Shivaratri* and I am closing my brief remarks on the day after *Maha Shivaratri*. This day is sacred to the memory of one of the great women of the age—Mahasati Ma Kasturba and it is sacred to the memory of another great man—Swami Dayananda Saraswati. I hope their spirits—the spirits of Ma KasUirba and Swami Dayananda Saraswati—will inspire us in our work and help us in our difficult task. It is my hope and prayer to God that man and woman may travel together as pilgrims of life, dedicating themselves and consecrating their lives to the achievement of *artha* and *kama*, the *artha* and *kama* which are rooted in *Dharma* and which lead to the goal of *moksha*, the liberation from bondage, the goal of the Living God, in whom we live and move and have our being, and in whom all men, all women, all Creation, are equal, free and divine. Mr. Naziruddin Ahmad (West Bengal: Muslim): May I point out that I am getting more and more like an anachronism. I have undertaken the task of opposing the original motion but I have not spoken up till now. It may be that the proper time I will be squeezed out. There are too many speakers to come. To-morrow at four o'clock I understand the closure

motion will be put.

Mr. **Chairman** : It is impossible to squeeze out Mr. Naziruddin Ahmad. The honourable Member will have a chance. Mr. Jhunjhunwala.

Shri **B. P. Jhunjhunwala** ( Bihar : General) : I would like to speak at another time.

**Shri L. Krishnaswami Bharati** : He either speaks now or he does not. According to the rules, if a Member is asked to speak, he must speak; otherwise he loses the chance to speak on the subject.

Mr. **Chairman** : Babu Ramnarayan Singh.

**Babu Ramnarayan Singh** : I thank you, Mr. Chairman for the opportunity you have so kindly given me today to do my part to oppose the obnoxious measure which has come on the floor of the House for discussion. Sir, at the outset I must tell the house that I am not an orthodox man.

**The Honourable Dr. B. R. Ambedkar** : You are not orthodox. I know you are not!

**Babu Ramnarayan Singh** : I am one of those who wants that all that is old must be broken without delay. But everything must be done with wisdom. When a thing is to be done, wisdom demands that we should judge when it is to be done and how it is to be done. I tell my honourable Friend Dr. Ambedkar that I am one of his admirers. I feel that he is the pride of the country: he is my pride also. But I do not understand why such a learned man is engaged in such a useless and pernicious job. Sir, this is a government measure. I do not know what they understand by law. Law is nothing but the will of the people expressed in terms of law. I am sorry that the Government does not understand what is law. I say that a majority of the people of this country feel that this measure should not have come on the floor of this House.....

**An Honourable Member** : No.

**Babu Ramnarayan Singh**: Take a plebiscite and you will find it.

**Shri L. Krishnaswami Bharati** : We are here representing them.

**Babu Ramnarayan Singh** : Apparently it appears that there is a measure called the Hindu Code Bill and a discussion is going on in this House but in fact a conspiracy is being hatched to disrupt the Hindu society. I feel that it is something like a preparation to invade the Hindu society. Nobody can say how long this Hindu Society has lived and flourished in this world. I can say that since the very creation of the

world, since the creation of the sun and the moon, since the very creation of the human race the Hindu society has lived and flourished and during all these periods there have been innumerable invasions of all descriptions against this Hindu society, Buddha came first. At one time it looked that Hindu Society would be no more but the world Guru Sankaracharya came and exported Buddhism from this country and re-established the Hindu society. Then Islam came. That was also an invasion like Buddhism but it was also a military one but I must say that Islam also failed in this country .....

**Dr. Mono Mohan Das** (West Bengal): Islam has become the Saviour and you have taken the protection of Islam.

**Babu Ramnarayan Singh** : Islam could not become the saviour but Islam too failed in this country. According to Islam there is no caste system in the Koran but some sort of caste system developed among those who followed Islam. In the same way Jainism, Sikhism all came in and originally they were all invasions against Hinduism but. in course of time they became tolerant and tried to develop and flourish side by side with the Hindu society and religion. This time this is also a sort of invasion but this invasion is a democratic one, though the force behind it, is a dictatorial one.

Some of my friends have already said that there has been a discussion in this House as regards the authority of this house to enact this measure. It is true and I feel confident that this House is not competent to enact a measure of this kind. This is not a Constituent Assembly even ....

An Honourable Member: What is it ?

**Babu Ramanarayan Singh**: It is a part of the constituent assembly. A large number of members of this House either by order or by convention have been asked not to attend this Assembly ....

**Shri L. Krishnaswami Bharathi**: With that the House is not directly concerned. The Speaker has already said that that is not a matter for the House.

**Babu Ramnarayan Singh**: Whatever may be the ruling of the Speaker I am not talking against that. I bow to the ruling of the Speaker but I am bound to speak for the world about the competency or authority of this House to enact this measure. The mandate of the country to the Assembly is to frame the constitution of the country. But so long as that constitution is not complete or has not come into force the Government must go on. It was by a hotchpotch agreement with the foreign rulers that this arrangement had been arrived at in order to

pass the budget and any other important legislation necessary for the administration of the country. But such a measure like this against which there is a lot of hue and cry throughout this country should not have come before this House for discussion or enactment.

When I hear in this house as well as outside the cry about the equality of woman with man I fail to understand it . . .

Mr. Tajamul Husain: May I ask the honourable Member why he accepted membership on the Committee when he is opposed to the constitution of this very honourable house.

**Babu Ramnarayan Singh:** There are many people who are confounded. The measure was sent to the Select Committee. This means that the House accepted the principle of the measure but this does not mean that every member has accepted the measure or accepted the principle of the measure. There are so many principles involved in this measure that so far as the house is concerned nobody can say that it has accepted -anything and everything . . .

**Shri L. Krishnaswami Bharathi:** If it was sent to the Select Committee, it means that it accepts the principle.

**Babu Ramnarayan Singh:** I was talking about the equality of man and woman. According to our Shastras man is not complete; nor is woman complete. According to our Shastras woman is called Ardhangi and even so man is not complete . . .

An Honourable Member: What is man called ? Babu Ramnarayan Singh : Man is also half. I may tell you .... Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, it is impossible to speak in the house when an honourable member addresses it on an important measure like this there are innumerable criticisms, and running commentaries, and laughter going on simultaneously. It is not in the interest of the dignity of the House. Members who do not like the speech may at least keep quiet so that those who want to listen may at least listen.

Mr. **Chairman:** Honourable members will kindly allow the speaker to proceed.

Babu Ramnarayan Singh: Sir, I thank my honourable friend Pandit Maitra for the encouragement he has given me. I was talking about equality. So far as the purposes of the world are concerned and so far as the continuity of the human race is concerned there is no question of equality or inequality between man and woman. Nobody can compare the hand with the feet, whether the hand is more useful or the feet are more useful, whether this eye is more useful or that eye. Man and woman are one and nothing more than one. As regards law I

tell my sisters throughout the country that law cannot help them. What can help everybody and also the womenfolk is love and noticing but love. Love between the pair is the only thing which can make the pair happy. Well, they may get the right of divorce. One woman may be divorced today ; other women may be coming for—marriage the next day. Monogamy may mean many-gamy: you won't allow a man to marry a second wife. The first wife will be divorced and he will marry the second day. The third day he will divorce that wife also and on the fourth day he will marry again. The process will continue. So far as pure love is concerned for that I think character of the people is most important. We must realize that in this country the people lost their character first and then anything afterwards. So, whatever we have to do in this matter we have to regain our character. As I say that the importance of hand cannot be compared with the importance of feet, so the importance of man cannot be compared with the importance of woman. I can rather say one thing. According to our *shastra* they are the goddess Lakshmi—Women are called in our society *Lokshmi, Saraswati, GrifulkksllinL*. They are anything and everything. If I may compare man with woman. I can say woman is much more important in the world than man. I can explain this further. If we remove or kill all men from the world the world will still go on. (*An honourable Member: ' Except one man.'*) Not even one man. I say if all the men in the world be killed, the world will still continue and the human race will continue. (*Honourable Members. ' Question '.*) I can explain it. There are my friends who question my statement. Well, Sir, if you kill all men today there will be millions of men in the womb of the women. Women are therefore certainly more important so far as the world is concerned. But those who talk of equality between man and woman want really to separate woman from man. Instead of helping the pair to be happy they are really destructive. As I say their importance is there; they are the *Lakshmi*. But at the same time it is very difficult to compare man with woman. Nature has created man and woman. Their tasks are different, their duties are different and their functions are different. What is the use of comparing the two? No comparison can really stand in this case.

My friends have talked about the provisions of the Bill. I shall touch only one or two points as regards the daughter's share in the father's property. First of all I was a son, then a brother, then a husband and then a father and so on. Not without exception, I cannot say, but I say that almost every Hindu father—1 am also a Hindu father and I also

have married my daughters here and there—every Hindu father is anxious to marry his daughter in a family which is superior in status, in wealth and in many other things to his own family. Now there is a talk of share of the daughter in the father's property. There have been jokes also. The daughter is respected in every way and is also given a share—you may call it a share—in the father's property by way of dowry and so on and so forth. When the question of share comes what will happen is this. Ordinarily if you come to my place as a guest I may show you hospitality as my friend or this and that. but if you come by way of right I do not think you will receive any hospitality from me. I tell my friends that law will not help anybody, as soon as the right for the daughter will be created in the father's property I think all question of love will go. My friend Mr. Kamath— although he suggested many things with which I do not agree—said one thing. Here is a family in which a man has got one daughter and two or three sons. The daughter will be married several miles away. The property may be small and after the marriage when the son-in-law, the *damad*, will be coming to his father-in-law's place for share of the property, or as a share-holder, he will not be respected. Everything should develop in a proper manner and in a natural way. If this measure is enacted there may be a lot of complications and litigations and the principle of pure love will be killed in our society.

I, therefore, appeal to every Member in this House to consider the matter in a calm and quiet manner. As it has been suggested from several quarter in the House and as I also said before, this House is not competent to enact the measure. How is it that they are so very anxious that this measure may be passed today? Why have not the courage to wait for a year or two? May I say they are afraid of the new elections?

**Shri L. Krishnaswami Bharathi:** No; not at all.

**Babu Ramnarayan Singh:** The Hindu society has lived and flourished so long according to the same customs and same everything else. then, heavens will not fall if we send the measure for circulation as my friend Mr. Naziruddin has stated, I appeal to each and every Member of the House to consider the measure in a calm manner. People may be afraid of the next elections, that we Congress people may

not get votes. That question does not arise. We must be true to ourselves and to the constituency and people who have sent Us. So, I oppose this measure with all the emphasis at "my command,

and support the motion of my friend ' Pandit ' Naziruddin Ahmad that the Bill may be circulated for public opinion.

**Shri H. Siddaveerappa** (Mysore State) : I congratulate the Honourable the Law Minister for the very lucid expression of the speech he gave while moving this Motion. Sir, a lot has been said that this measure vitally affects the Hindu society. I come from a part of this country, namely Mysore, where some of the fundamental things, this measure wants to introduce, are already in force. We have, for instance, got the law of adoption as also the law regarding the daughter's share, and several other things, though they are not on all fours with the present measure. But the principle is there. We have enacted a Bill as early as 1934, called the Hindu Women's Rights Regulation and for the last fourteen years that Bill is law in Mysore, but we have not found there any general upheaval. There is not much litigation nor is there any disruption of the Hindu society as has been feared by some of the honourable Members here. As a matter of fact, by our experience we have come to understand that the measure which is now in force is not of the extent that is needed and another Committee has been formed with a view to see that there is further improvement in the existing measure.

It was said that the measure before the House affects the caste system or some other fundamental beliefs or principles of the Hindu society. Well, Sir, my reading of some of the Hindu literature is that if we study the Vidic period, that is from 2000-1400 B.C., and study the Hindu society then in existence, we do not see any of these four castes in the Hindu society then in existence. Every man born, according to his *guna* or *karma* had to go through all the *vamas* or *ashminas* in his life time. A boy, until he attained the age of twenty, had to perform the household duties and obey his *guru* and do all the other acts that were assigned to him, and he was called a *siludra*. After the age of twenty he was allowed to be married and he had to take the responsibility of maintaining the family, then, according to the duty that was imposed on him he was called a *vaishya*. After he enjoyed life for some time and after he reached the age of 40 or so, when there was need for every man to defend the State, he had to do the duty of a *ksatriya*. After he attained a particular age, say 60, when he had seen so much of life, and on account of his experience and learning, he underlakes the task of leaching the disciples and doing other duties of wisdom, and he was called a Brahmana, a man who has got the *guna* of *Brahman*.

Therefore, this caste system in this country originated in a different

way, and developed in a different way. But today we understand that there are nearly 13,000 castes and a much larger number of sub-castes which have got different traditions, different customs and what not.

We find today that we are one so far as political unity is concerned. If we want to have any uniform standard of rules or any uniform standard of our laws, it is absolutely essential that there must be some Code which gives a certain standard. May be if necessary at the consideration stage we may consider which of the clauses are necessary and which are not necessary; but if we say there is no need at all for a Code, I do not think any of us, if we apply a little commonsense, can accept that position. We see in this country there are people who profess different beliefs—*Dwaita* and *Adwaita*. There are people who practise monogamy and polygamy and in some places there is polyandry also prevailing. Under these circumstances, is it not necessary for us to see that we have got a uniform code for purposes of inheritance, marriage and several other things? During the time of the Britishers we found that in the guise of religious neutrality or non-interference, they never cared to see that any evils in the Hindu society were wiped out; they never attempted any reform in that direction. As a matter of fact, when Warren Hastings was impeached by Burke, it is said that one of the charges levelled against him was that he used those caste codes for purposes of his personal aggrandizement. The Britisher saw that the caste system was ideally suited for his own advantage, therefore he never interfered to bring about any needed reforms in the society. But that is no reason that at a time when we are free, we should not aim at bringing about this much desired reform. Somebody said, we are proceeding further, why should we take up this measure so early as this and why should we not wait for some more time? My point is this : this reform was long overdue; it ought to have come much earlier but for the fact that we were a dependent nation and that we were not masters of our own destiny. My submission is that it has not come a day too soon.

So many other objections were raised regarding the competency of this House etc. As a matter of fact, the honourable the learned Mover has given a clear exposition as to how we are competent to bring about this desired result; So I do not wish to take the time of the House especially as there are many other speakers.

With regard to the principle of divorce, it is in my opinion a very much debated point. It is a thing which really agitates a large number



of people in the Hindu society. Whether it be sacramental marriage or any other form of marriage, I do not wish to see that there should be under any circumstances an indissoluble tie of marriage. Instead of giving unfettered discretion to people. I would request the honourable the Mover to consider this point, namely, that a time-limit may be imposed—say live years or three years, whichever is approved by this House—within which the married people may be able to round off their angularities, having time to study each other, and if inspite of it they are badly off, it may be necessary that the marriage tie will have to be snapped.

**Pandit Lakshmi Kanta Maitra:** Marriage on probation, you mean ?

Shri H. Siddaveerappa: Not marriage on probation, but before anybody can have the benefit or advantage or whatever you call it of divorce, a particular period should be prescribed within which no married couple may be allowed divorce.

Shri L.'Krishnaswami Bharathi : That is the English law. They have three years there.

Shri H. Siddaveerappa: Let us consider the experience in the Western countries; for instance, let us take America. We have the experience of a famous divorce court judge, Lindsay. Whenever anyone went to him for a divorce, he used to tell: " You people will live together for one or two months and then come to me again. Even inspite of it, if you feel that you must get yourself divorced then you may apply. " He says that invariably his experience as a judge is that whenever people try to separate each other, it is because that they have not tried to understand each other. If there was occasion to judge each other, there may not be recourse to this extreme form of separation. Therefore, I suggest that some such period should be prescribed in regard to divorce.

Regarding the theory of fragmentation of property, we find that agricultural land is not at all affected by this measure. It is a good thing in itself.

**Ch. Ranbir Singh (East Punjab: General):** It is affected, in Centrally Administered Areas.

Shri H. Siddaveerappa: No, it is not. Only the Centrally Administered Area is affected, which is a very small area. So far as this agricultural land is concerned, I think the time has come when we should undertake agrarian reform in the interests of our own agriculture and our own existence so far as food is concerned. Not only that, with regard to inheritance the time has come when we shall have to have

some such thing as the law of primogeniture. In view of the fact that 90 per cent. of the people of this country are living in the villages and their property is mostly agricultural, and in view of the fact that this property of the 90 per cent. of the people is taken away from the operation of this Act, I believe the theory of fragmentation does not stand to logic or reasoning.

With regard to custom, some of my friends submitted that custom ever rides law, therefore any custom having the sanction of law should be accepted. I think many of us, who have experience as lawyers, can easily see how custom conveniently comes in handy to take away the effect of any benevolent law. I may give one instance. There is a provision in the Indian Penal Code under which if any girl is dedicated for an immoral purpose it is an offence. The marks of dedication are the tying of some beads round the neck of the girl. Now the ingenuity of a lawyer was able to invent the custom of tying of beads and apply that custom even in cases where the dedication was done for immoral purposes. Apart from this, we also know how on account of custom litigation sets in and how enormous amounts are spent in it, at least it was so in the previous regime. People used to spend enormous amounts in getting a decision on any particular point and squander money over judges distinguishing between two different judgments. Today this Bill is so simple, so lucid, that without recourse to any lawyer, any man can for about four annas ascertain what his position is with regard to law.

**Pandit Lakshmi Kanta Maitra** : He can manage everything with four annas, you mean ?

Shri H. Siddaveerappa: It is quite possible. A day will come. We will have to try for that also. As a matter of fact, we have been seeing how these judicial decisions affect some of the property rights' and other things. A judge comes to one decision and that will be law for some time. Tomorrow they may find out some other law, some text or *smriti* or some such old document, and we will be told that this law is overruled, with the result that nothing is settled in Hindu law. As a matter of fact, we have been seeing under the British regime, for the last 150 years, there have been so many decisions after decisions, any number of them and still they say nothing is settled in Hindu law. I want to ask when we will have a settled form of law wherein the ordinary man can understand what exactly is his position. As a matter of fact, when a creditor wants to give some money, he has to satisfy who are his heirs, who have shares and all that, with the result that on an

agricultural land on which he can give Rs. 1,000 loan, he gives only Rs. 500 or so. Therefore, taken from any angle of view, I believe this is a very healthy measure, so I give my wholehearted support to it.

Mr. **Chairman** : The debate will continue tomorrow after Question Hour.

HINDU CODE—*contd.*

Shrimati G. Durgabai (Madras: General): It is with great pleasure that I rise to support the motion made by the Honourable Minister of Law. I also feel that I should express my deep debt of gratitude to Sir, B. N. Rau and his colleagues on the Committee who have bestowed great labour on the report which forms the basis of this Bill.

The Bill to codify the Hindu law when it goes on the State Book will be a great landmark in the social history of this country. Before I go in greater detail into the main provisions of this Bill I would like to stress one point. Honourable Members are aware of the fact that the provisions of this Bill are of a permissive or enabling nature. They impose no sort of obligation or compulsion on the orthodox section of the Hindus. Their only effect is to give the growing and clamant body of Hindus, men and women, the freedom to live a life which they wish to live without in any way affecting or infringing their liberty to adhere to the old ways.

I wish to confine my remarks only to one or two main objections that have been raised against the bill. The first objection is against the attempt at codification itself. It is urged that many of the principles of the Hindu Law are now well-settled, and as it would unsettle the settled law, a code is not called for at all. The other objection is that far from preserving the principles of Hindu Law which have been handed down from generation to generation an attempt at codification would tend to introduce principles which are quite alien to Hindu 12 NOON society. It has been said that the Legislature has no right

to alter the law of *smritis*, *shrutis* and sages of great repute. An other charge against the Hindu Code Bill is that it seeks to introduce changes of a revolutionary character and therefore, it will destroy the law laid down by *smritis* and *Dharma*. My answer to all these objections is that it is just because many of the principles of the Hindu Law are now well settled, that an attempt to set down all these principles into a systematised and easily understood code should be made.

Hindu Law as it exists today is rigid without being certain. Many

judicial decisions and precedents have outlived their usefulness. As an English writer puts it, the case law on the subject has become a luxuriant jungle where it is not possible to see the wood for the trees. There are frequently conflicting decisions of various High Courts given from time to time. Even the decisions of the Privy Council on some of the intricate questions of law are widely felt to be out of accord both with ancient authority and also modern spirit. A uniform and unified law will prove a boon to Hindu Society, because it would save considerable time of law students and also practitioners, who have otherwise to take a considerable number of years to get to acquire a full grasp of the law. Even the ordinary citizen will also be able to read the code and say to himself, " Within this cover is the whole basis of my rights, privileges and obligations. " A code will also minimise the time. and labour of Judges and it would also induce the speedy administration of justice. To be without a code is, in my opinion, to be without justice.

The objection that it has introduced changes of a revolutionary character is mainly voiced by vested interests. The subordination of some of the present interests to secure the future interests of the country is always a thing to be welcomed. As a matter of fact, this Code does not really go far enough in that direction and that is my opinion.

The bulk of the agricultural property is excluded from the operation of this code. Therefore, it is urged that your object to have a uniform law is frustrated. Why attempt a Code at all if this object is defeated? My answer to that objection is this. What is aimed by this code is to have a uniform law for all Hindus, but not a uniform law necessarily for all kinds of property. In the interest of agriculture itself, if not for anything else, separate laws and special laws will be enacted by appropriate legislatures which may include a special law of succession which is quite different from the law of succession applying to other forms of property.

Now. I come to what I consider as the main objection, that is, the giving of a share to the daughter. This was opposed on many grounds that it would lead to disintegration and fragmentation of property, besides introducing a foreign element in the shape of the son-in-law. And also it is objected to on the ground that the simultaneous heirship of a daughter with a son would simply shatter the Hindu society. Also it is said that if the daughter takes away a share the love of her brothers is lost. It is also said that sons in many families would simply be ruined under the double burden of marriage expenses and also a share to the

daughter. May I ask what sort of affection it is of the brothers if only it would involve putting a little more strain on their own self-interest? May I also ask if no share is given to the daughter the sons' love will be greater?

With regard to fragmentation I fail to understand how this question be raised, as it has already been said that agricultural property is excluded from the purview of this Bill. This point was raised by one of the honourable members of this House and we are all aware that the bulk of agricultural property is excluded from the operation of this code. It would only apply to urban and movable property. What they mean, I feel, by fragmentation is diminution of the share which they will get if the daughter is also given a share, the daughter being of the same flesh and blood should there be so much uproar, I ask, if a share is sought to be given to her?

With regard to the introduction of a stranger into the family my answer is that the property which the daughter takes from her father, if necessary by legislation may be made to form as part of her separate property. The evil or the good resulting from the legal provision depends also on the particular individual i.e., son -in-law concerned. I do not want to say much about this.

It should be noted that the daughter, as do the sons, demands a share, if need, be only after the death of the father and there is absolutely no question of her demanding a partition when the father is alive. Therefore I do not see why some honourable members should object to this. As the Law Minister has already dealt with the matter, the *smritis* themselves have recognised the share of the daughter to her father's property and therefore there is nothing revolutionary about this and the attempt to exclude the daughter on the ground that she does not contribute to the spiritual benefits of the father or her ancestors is, I say, unjust and unfair.

In this connection the argument is put forward, why not the daughter take a share in her husband's property and not come to ask for a share in her father's property? This appears to be a compromising formula. I may say straightaway that this compromise formula is not or will not be acceptable to women. We say that we should be recognised on a basis of equality. This code proposes to abolish the distinction that exists on the basis of sex and that should be removed. The daughter should be recognised as an heir and should enjoy her property in her full right as a daughter and as an heir to the father. As regards the question of disintegration I have already dealt with the

matter. The evil could be met by different ways. Fragmentation can be stopped and consolidation could be secured by special laws. If the property goes down to a certain extent that could be sold and the shares could be adjusted. There are different ways how this problem could be tackled and the argument on that score could not be advanced that the daughter should not get a share. Hence the Select Committee has recommended, based on this principle of equality that she should be given an equal share with the son. I appeal to the honourable members of the House to support the recommendation made practically unanimously by the Select Committee in this regard.

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Shri H. V. Kamath (C. P. and Berar: General) : Dr. Ambedkar was not in sympathy with that.

Shrimati G. Durgabai : Therefore when it is said that the daughter takes a share both from the father and from the husband and the husband takes nothing, how about this? The Select Committee has recommended that the man also can inherit the wife's property in the same way as the wife inherits the husband's property and also the son will be given a share equal to that of the daughter's in the mother's property just as the daughter claims a share in her father's property. Therefore, there should be no difficulty even in this regard for those who oppose this Bill on these grounds there is one answer given. I do not want to quote because the time is limited and other members are anxious to speak (*Honourable Members : Go on. Take your time*) Mr. V. V. Srinivasa Iyengar pointed out in this connection that those who oppose this legislation on religious grounds labour under a misunderstanding that Hindu law has remained static from the time of Manu. That is not the position.

This takes me on to another subject and that is about the status of women with reference to the holding of an estate absolutely and not in life. The Bill seeks to remove this disqualification attached to woman's estate and it gives her the right to hold property absolutely and not for life only. The main argument in favour of limiting the estate in the case of women is that they are incapable of managing it and also that they are likely to be duped or exploited. Also it is said that they are illiterate and they do not understand the principles of management and hence there will be a strong inducement to designing male relatives to take away her right. My answer to all this is this. The House is aware that the daughter has an absolute estate in Bombay today. Therefore, on that ground I do not think they are exposed to any risk. The other

argument is that we have score of instances where women have proved better managers than men. Also there is one more argument. No doubt I agree that women are illiterate but may I ask you how many men are literate? Three out of four men continue to be illiterate today (*An honourable Member: 'Nine out of ten'.*) Therefore, the relative advantage enjoyed by men is confined only to one in four of the male population (*An honourable Members : ' They are the sons of their mothers.'*) and it should also be remembered that the percentage of illiteracy among women is rising very much faster today than it is among men (*Shri H. V. Kamath: ' Question.'*). With regard to the quantum of her share I have already stated the position of the Select Committee. We have recommended an equal share to the daughter. I appeal to you that you should be generous enough to endorse the recommendation made by the Select Committee without any hesitation on your part. I will now come to another subject, namely monogamy. However much I wish to speak on this subject, I do not do it because of the limited time at my disposal. Not only that, but this has been dealt with amply by the honourable the Law Minister and also by several other speakers. Many arguments have been put forward on economic and social and other grounds; even religion and spiritualism have been sought in aid to support their arguments. But feelings were expressed in a very light hearted manner: if only a man is healthy and wealthy, why not he marry and marry again! Also, that if the rule of monogamy is enforced many Hindus will become Muslims in order to secure the benefits of polygamy! I need not answer this question because I have found one lady witness very ably and effectively answering this point. She said that if the rule of monogamy is not enforced, it may be that women will become Christians in order to secure the benefits of monogamy, but neither of them I think is serious.

**Sliri B. Das** (Orissa : General) : Do you think a Christian woman is happier than a Hindu woman?

**Shrimati G. Durgabai** : As the honourable the Law Minister has already stated, the force of world opinion and the practices prevailing in the whole world are there and they are in favour of monogamy. Therefore, I need not deal with this matter any more,

Neither have I time nor is it desirable for me to take the other aspects of the Bill because there are other Members who will deal with the questions like marriage and divorce; but I only wish to say something on co-parcenary. The distinction between *Mitakshara* and *Dayabhaga* came as a result of the different interpretations put by the

commentators and other interpreters. Fundamentally, the basis of joint family is there common to both. The right by birth and the principle of survivorship is a distinctive feature of *Mitakshara*. The *Dayabhaga* system has in actual experience proved very satisfactory and the Bill therefore, seeks to replace the *Mitakshara* system of inheritance by *Dayabhaga*. It is said the greater prosperity of the people in Bengal and their increasing commercial enterprise is due to a large extent to the *Dayabhaga* system. I am told that the commercial enterprise of Nattukottai Chettiyars in Madras is largely due to their ideas of legal relations of the members of their families which approximate more to those of partnership than is the case in Brahmin joint families.

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